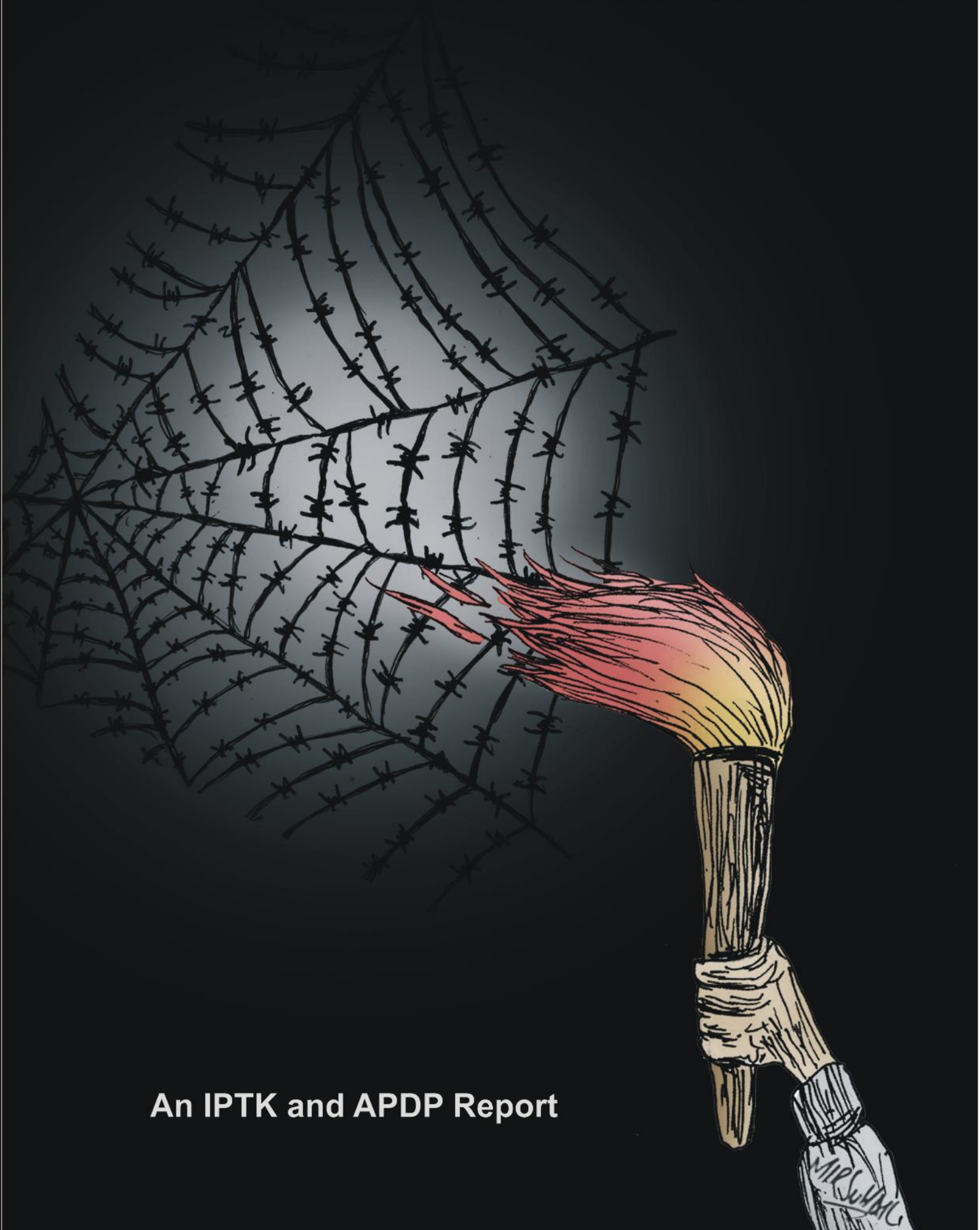


STRUCTURES OF VIOLENCE

The Indian State in Jammu and Kashmir



An IPTK and APDP Report

STRUCTURES OF VIOLENCE

THE INDIAN STATE IN JAMMU AND KASHMIR

**The International Peoples' Tribunal on Human Rights and Justice in Indian-Administered Kashmir
[IPTK]
and
The Association of Parents of Disappeared Persons
[APDP]**

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We must take sides. Neutrality helps the oppressor, never the victim. Silence encourages the tormentor, never the tormented. Sometimes we must interfere. When human lives are endangered, when human dignity is in jeopardy, national borders and sensitivities become irrelevant. Wherever men and women are persecuted because of their race, religion, or political views, that place must - at that moment - become the center of the universe."

Elie Wiesel, The Night Trilogy: Night/Dawn/The Accident

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IN GRATITUDE

The work of civil society in Jammu and Kashmir is to speak truth to power and to confront the State and its violence. Over the last 15 years, various constituents of JKCCS through documentation, litigation and campaigns have tried to present the reality of Jammu and Kashmir to the international community and help document the past. The struggle for justice and freedom hinges on remembering one's own past and is a constant battle between memory and forgetting, and hope and despair. This report *Structures of Violence* is a part of this process. APDP and IPTK, both constituents of JKCCS, have different histories but a common goal and we hope this report informs and sparks interest in Jammu and Kashmir and its ongoing struggle.

We are grateful to those whose work and commitment have enabled this report. We thank concerned citizens, activists, scholars, journalists, lawyers, students, grassroots leaders, and those affiliated with local civil society organizations, for generously sustaining and making possible this work.

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As always, as we present this report, we are reminded of the hours, months and years of work ahead. The process continues...

Advocate Parvez Imroz
For IPTK and APDP

GLOSSARY

All Parties Hurriyat [Freedom] Conference [APHC]: An alliance of pro-freedom parties formed in 1993.

Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA]: Legislation that provides special powers and immunity to the armed forces operating in Jammu and Kashmir. The immunity clause mandates that prior sanction for prosecution is necessary.

Border Security Force [BSF]: Indian paramilitary force charged with guarding India's land borders

Central Reserve Police Force [CRPF]: Indian paramilitary force that assists the police in maintaining law and order and containing insurgency

Criminal Procedure Code, 1989 [CrPC]: Jammu and Kashmir legislation that lays down the procedural rules that govern criminal investigation and trial in Jammu and Kashmir

Deputy Commissioner [DC]: Head of the local administration at the district level. The office encompasses that of the District Magistrate, District Development Commissioner and District Collector of the revenue department. He is the detaining authority under the Public Safety Act, 1979.

Divisional Commissioner: Head of the local administration at the division level. Jammu and Kashmir has two divisions – Jammu and Kashmir. All the Deputy Commissioners work under him.

Ex-gratia government relief: Government relief for death or disability as a result of violence attributable to the breach of law and order or any other form of civil commotion; Rs. 1, 00,000 granted for the death of any person

Government Gunmen: State backed, sponsored, armed and controlled militia. The more predominant groups were Ikhwan and Muslim Mujahideen. They were controlled primarily by the Indian army, but also worked with police and paramilitary personnel. Referred to locally as renegades and Ikhwan.

Hizbul Mujahideen [HM]: An indigenous militant organization founded in 1989 and still operational in Jammu and Kashmir.

Jammu Kashmir Liberation Front [JKLF]: The first indigenous militant organization which declared a universal ceasefire in 1994 and since then is active as a pro-freedom political party.

Lashkar-e-Taiba [LeT]: A Pakistan based militant organization founded in 1990 and operational in Jammu and Kashmir

Muslim Mujahideen [MM]: A breakaway group of the HM that was created in 1993, and subsequently began work with the Indian army and other State forces

Public Safety Act, 1978 [PSA]: Jammu and Kashmir legislation that allows for administrative detention without chargesheet or trial.

Ranbir Penal Code, 1989 [RPC]: Jammu and Kashmir legislation that lays down the substantive criminal laws

Rashtriya Rifles [RR]: A special counter-insurgency force of soldiers deputed from other battalions of the Indian army in Jammu and Kashmir created in early 1990's.

Special Operations Group [SOG] of the Jammu and Kashmir Police: Counter-insurgency wing of the Jammu and Kashmir Police constituted in the early 1990's and alternatively referred to as the Special Task Force [STF]

Special Police Officer [SPO]: Person recruited as police officers to assist the Jammu and Kashmir Police. Some of them were recruited from the Ikhwan/MM background. They are used for counter-insurgency and information gathering which is against the Section 19, Police Act, 1983. They are paid a stipend and not a regular salary.

SRO-43 [Statutory Rules and Orders]: Rules for compassionate employment of family members of victims of militant related action or other specified reasons

State Human Rights Commission [SHRC]: A quasi-judicial human rights body formed under the Jammu and Kashmir Protection of Human Rights Act, 1997 for the protection of human rights in Jammu and Kashmir

Village Defence Committee [VDC]: Village level committee composed of civilians, armed by the government and used by the armed forces for counter-insurgency. The VDC's came into existence in 1995.

UNDERSTANDING THE REPORT

Context

Prepared over two years, this report is a part of the continuing work to understand and analyze the role of the Indian State in Jammu and Kashmir, an occupied territory internationally recognized as a disputed territory between India and Pakistan, that has resulted in widespread and systematic violence including the disappearance of 8000+ persons, 70,000+ deaths, 6000+ unknown, unmarked and mass graves, and countless cases of torture and sexual violence.

Human rights groups, activists, journalists, filmmakers, lawyers and civil society groups have written, filmed, documented, litigated, brought attention to, and reproduced material that has repeatedly highlighted the violence and politics of the Indian State and the everyday militarized reality of Jammu and Kashmir. The past work of IPTK and APDP, constituents of JKCCS, has been a part of this wider campaign and effort. Through this journey, patterns have been identified, individual State actors have been named, phenomenon such as unmarked graves, enforced disappearances and government gunmen such as the Ikhwan have been brought to light, and consistently, the Indian State has been indicted.

This report, while continuing the above efforts, and illustrating the patterns of violence through individual case studies, is directly concerned with identifying the structure, forms and tactics of violence of the Indian State in Jammu and Kashmir. How did/does the Indian State perpetrate this violence? What precisely is the structure, physical and institutional, through which weapons, ammunition, soldiers, officers, camps and battalions inflict violence on the people of Jammu and Kashmir? Where is the control? The driving motivation of this exercise is, as has always been: Responsibility. Who do we hold responsible for the individual and collected acts of violence?

Documentation work such as the 2012 IPTK/APDP report *Alleged Perpetrators* identified 500 named alleged perpetrators responsible for 214 cases of human rights violations in Jammu and Kashmir. Numerous other reports, including by IPTK/APDP, have held the Indian State, Indian army, Paramilitary units such as the Border Security Force [BSF], Central Reserve Police Force [CRPF], Jammu and Kashmir Police and government gunmen such as the Ikhwan, responsible. The 2009 IPTK/APDP report *Buried Evidence* investigated the phenomenon of unmarked and mass graves in North Kashmir. All this work goes towards assigning culpability of the forces involved. But, it is either very specific in its analysis [an individual soldier responsible for an individual crime] or too general – the armed forces being held responsible for a collection of crimes. But, in each and every case, there is a connection between different parts of the larger apparatus – what we call the “structure” - and

the individual victim/crime. The torture of a civilian in a camp by army personnel is not disconnected from the army hierarchy, and nor is it disconnected from the other forces and agencies operating in the area. Past work has been unable to comprehensively capture the various actors connected to the crime. It has been unable to present the web of actors that work together, with clear lines of command, to inflict violence in an individual case. This report seeks to actually bring in focus the patterns, scale and structure of violence. This report is a beginning of an effort to understand this structure and how it operates.

The question of assigning responsibility to State actors within this structure is important in a context where there have been no trials of the armed forces for human rights violations in Jammu and Kashmir. In the larger quest for political control, the land and people of Jammu and Kashmir have been subjugated at all costs and with absolute impunity. Past reports have provided evidence, through case studies, that there is no will to provide justice even though the system exists in theory – a judiciary headed by the Supreme Court of India and a police force capable of carrying out investigations. The institutions and procedures of rule of law in Jammu and Kashmir have been subverted to function within the larger culture of institutionalized impunity and violence. It is this state of affairs that makes it incumbent on civil society to document crimes and assign responsibility. The passage of time has resulted in the loss of evidence, whether sites of violence [graveyards, interrogation centers] or persons [witnesses]. Memory fades. Family members of victims die and as a result the repository of the truth of the violence the victim faced is also lost. Most crucially perhaps, as time passes, the accused either die or find ways to assimilate into new communities and are forever lost to the investigative gaze. The State has been responsible for both the infliction of violence and denial of remedies to the victims. The unwillingness of the State to investigate immediately shifts the responsibility onto civil society.

Further, the continuing denial of justice from the Indian State is a reason for appealing to the international community and justice mechanisms as domestic remedies have conclusively failed the people of Jammu and Kashmir. As recommended by this report, the international community must respond to the evidence presented in this report. Case studies, supported by official record or testimonies, of enforced disappearances, extra-judicial killing, sexual violence and torture must not be ignored. To ignore this evidence is to endorse the violence of the Indian State. There must be an immediate initiation of processes that collect and analyze this information to be used as a part of a formal procedure that records the truth and assigns responsibility.

The cases documented in this report may constitute crimes of Genocide, Crimes against Humanity and War Crimes under international law. The relevance of this documentation is to therefore begin collecting

evidence and presenting it in a way that will enable future international processes to understand the violence in Jammu and Kashmir and the structure responsible for it. International criminal law does not limit responsibility to only the physical perpetrators of crime. The principles of individual criminal responsibility are based on the notion that those who do not physically commit the crime in question are still liable for other forms of participation. This could include, for example, ordering, instigating, or even inciting¹. In addition, courts have held that even the commission of a crime, the highest mode of liability, would not necessarily require the physical involvement in the perpetration of crime. The Appeals Chamber of the United Nations International Criminal Tribunal for Rwanda [UNICTR] in *Prosecutor v. Athanase Seromba*, 12 March 2008, at para 161:

The jurisprudence makes clear that “committing” is not limited to direct and physical perpetration and that other acts can constitute direct participation in the actus reus of the crime. The question of whether an accused acts with his own hands, e.g. when killing people, is not the only relevant criterion. The Appeals Chamber therefore finds, Judge Liu dissenting, that the Trial Chamber erred in law by holding that “committing” requires direct and physical perpetration of the crime by the offender. To remedy this error, the Appeals Chamber will apply the correct legal standard—i.e., whether Athanase Seromba’s actions were “as much an integral part of the genocide as were the killings which [they] enabled.” In so doing, it will determine whether, as the Prosecution has argued on appeal, the Trial Chamber’s factual conclusions and the evidence contained in the trial record support the conclusion that Athanase Seromba became a principal perpetrator of the crime itself by approving and embracing as his own the decision to commit the crime and thus should be convicted for committing genocide.

In addition, criminal responsibility may also be assigned for State actors using the internationally recognized principle of command responsibility. While a lower form of liability than commission, command responsibility is also an effective and important mode of liability to assign responsibility. In paras 197 and 198, the United Nations International Criminal Tribunal for the Former Yugoslavia [UNICTY], in *Prosecutor v. Delalic & Ors.*, on 20 February 2001, held as follows:

In determining questions of responsibility it is necessary to look to effective exercise of power or control and not to formal titles. This would equally apply in the context of criminal responsibility. In general, the possession of de jure power in itself may not suffice for the finding of command responsibility if

it does not manifest in effective control, although a court may presume that possession of such power prima facie results in effective control unless proof to the contrary is produced. The Appeals Chamber considers that the ability to exercise effective control is necessary for the establishment of de facto command or superior responsibility and thus agrees with the Trial Chamber that the absence of formal appointment is not fatal to a finding of criminal responsibility, provided certain conditions are met.

As long as a superior has effective control over subordinates, to the extent that he can prevent them from committing crimes or punish them after they committed the crimes, he would be held responsible for the commission of the crimes if he failed to exercise such abilities of control.

Therefore, responsibility for the crimes in Jammu and Kashmir must not be limited to the individual forces personnel who physically commit the acts. The structure behind him – whether formal or informal – directing, ordering, committing, commanding – must be identified [as we seek to do in this report] and held responsible under international law.

Findings

Overall this report documents the extra-judicial killings of 1080 persons and enforced disappearances of 172 persons and numerous cases of torture and sexual violence. In Chapter 4 the report has focused only 333 cases of human rights violations with 198 case studies on extra-judicial killings [amounting to a total of 415 persons killed] and 73 case studies on enforced disappearances [amounting to a total of 89 disappeared persons]. The remaining cases are carried in Annexures 2 and 4 of this report.

Chapter 1 of the report lays down the structure of the Indian army and the BSF from the highest level – army headquarters and Director General, BSF – all the way down to the Brigade/Sector level in the case of the army, and Battalion level in the case of the BSF. This layout allows us to trace the theoretical line that connects an individual victim and perpetrator in any neighborhood in Kashmir all the way to the army and BSF headquarters in New Delhi. This chapter also estimates the strength of the armed forces in Jammu and Kashmir from a conservative **6, 56,638 to 7, 50,981** [depending on the number of Battalions considered as the base for each Brigade formation]. Government of India and its various functionaries have contested claims that Jammu and Kashmir is the world’s most militarized zone, with approximately 7, 00,000 forces. This Chapter through its calculations and estimates is an attempt to understand and inform

¹ See generally, for an overview of the modes of liability under international criminal law: Modes of Liability: Commission & Participation,

the public in a context where little information is available. In the past the Indian State has always dismissed these estimates as an exaggeration. This is also an opportunity for the Indian State and Indian army to specifically dispute these claims. It is pertinent to note that in the full fledged wars being waged in Afghanistan, Iraq, Libya and the Israeli occupation of Palestine, the military deployment is far less than the level of militarization in Jammu and Kashmir. In no other context of warfare have military personnel operated with the absolute impunity that has been seen in Jammu and Kashmir where troops are supposedly operating for peace keeping duties. With the structure laid down, we select two Brigade level formations [referred to as Sectors by Indian army] – Khanabal camp and Tapper camp. Each is headed by a Brigadier who in turn controls numerous Battalions and camps. This chapter proceeds to look at the impact and connection between the men in control at the Brigade level and the violence on the ground. This is a template of study that can be reproduced, with the assistance of the structure laid out, in any area of Jammu and Kashmir. The heart of this investigation is: What is the culpability of the Brigade level officers and their superiors? Through victim and insider testimony, we seek to answer this question. The evidence and analysis *prima facie* suggests that the army was and continues to be in effective control and command of these areas. In fact, in the 1990s, the police and local administration were rendered defunct by the military authorities. Finally, and this requires further investigation, there is evidence to suggest that beyond command responsibility, individual criminal responsibility for the actual commission of crimes would also rest at the Brigade level. In fact, there is evidence to suggest that the knowledge, responsibility and control on the ground went beyond the Brigade level, for example in the Islamabad study, even up to the Victor Force Headquarters in Awantipora [Division level formation], which is controlled by a Major General ranking officer.

Chapter 2 of the report understands operation of this structure of State through specific spectacles of “mass violence”. Five case studies, comprising eight different events/crimes including extra-judicial killing, torture and sexual violence, and a range of perpetrators [army, paramilitary, police, government gunmen] illustrate the extent of violence and the intended effect of this violence on communities. Once again, in keeping with the core intention of this report, this calculated violence cannot be understood as a consequence of individual actions independent and disconnected of the larger structure of violence. Further, this chapter also follows the cases through the Indian criminal justice system – from first information reports at the police station to the Supreme Court of India. The violence, obfuscation and impunity at every step illuminates the system at work and reiterates the argument that there can be no justice from the same judicial system that is a part of the larger apparatus of occupation and employs mass violence as a strategic tool of political control.

Chapter 3 of the report highlights a mechanism that specifically supports the military structure of violence: court-martial. Created to address disciplinary issues within the army, the court-martial has been used to effectively stall any public, transparent civilian process for justice. Widely accepted internationally to be an inappropriate judicial remedy in armed conflict, the court-martial in Jammu and Kashmir is found to be opaque, impossible to access, against principles of natural justice, and biased. In its functioning, result and impact, it serves as a tool for the armed forces to protect their own. Given the Indian army history of interference and abuse of the civilian judicial process, there can be no expectation from the opaque court-martial process.

Chapter 4 of the report presents and analyzes 333 case studies of enforced disappearances, extra-judicial killings, sexual violence and torture with 972 identified alleged perpetrators. The actual numbers of alleged perpetrators in these 333 cases would necessarily be higher given the larger structure of violence within which these individual perpetrators operate. The case studies reiterate the lack of any will to provide justice. Despite overwhelming evidence, the Indian judiciary and executive [supported by the legislature through laws such as AFSPA] do not allow for fair and independent processes of investigation or prosecution. The list of alleged perpetrators, their ranks, units and area of operations strongly suggests that the crimes listed within this report occurred across Jammu and Kashmir, by the various armed forces and police, and at various levels of the hierarchy of each of these armed forces and police. The Indian State narrative of human rights violations being mere aberrations is not substantiated on consideration of these cases. Crimes in Jammu and Kashmir have not been committed despite the Indian State but because of it. The structures of the Indian State, including the Government of Jammu and Kashmir, must be accused of not just standing by while human rights violations have taken place, but they carry a far higher culpability. They must be accused of willfully putting in place structures specifically meant to carry out these crimes. Some statistics reveal a horrifying picture. From the 333 cases emerges a list of 972 individual perpetrators, which include 464 army personnel, 161 paramilitary personnel, 158 Jammu and Kashmir Police personnel and 189 Government gunmen. The designations of some of these alleged perpetrators points to a deep institutional involvement of the Indian State in crimes in Jammu and Kashmir. Among the alleged perpetrators are one Major General and seven Brigadiers of the Indian Army besides 31 Colonels, four Lieutenant Colonels, 115 Majors and 40 Captains. Add to this, 54 senior officials of the paramilitary forces and the following Jammu and Kashmir Police personnel: a retired Director General of the Jammu and Kashmir Police, a present Additional Director General of Police, two Inspector Generals, two Deputy Inspector Generals, six Senior Superintendents of Police, and three Superintendents of Police.

This report establishes that the counter-insurgency grid, including military, police and intelligence agencies, have used the techniques of “dirty war” to neutralize the popular resistance. The report reveals how India armed and used Kashmiri civilians to combat the armed insurgency. This was also aimed at fragmenting the society, including along ethno-religious, linguistic and regional lines. Having served the interests of the Indian State many of these operatives were neutralized and killed.

Recommendations

This evidence, and attempt to assign responsibility, must not be ignored by the international community. In fact, in light of the unwillingness of the Indian State to provide justice, international processes must be put in place to receive and process this evidence. In the era of globalization, human rights are not the sovereign responsibility of States. The international instruments and mechanisms exist as guarantors of rights and freedoms transcending State boundaries. India's claim of being a functional democracy, and demand for a permanent seat in the United Nations Security Council, is belied by its unlawful conduct in Jammu and Kashmir and refusal to allow accountability. In July 2008, the European Parliament passed a resolution urging Government of India to investigate unmarked and mass graves. But, no action has been taken on this resolution.

India's history of denying the applicability of international law to the Kashmir conflict, and its refusal to allow access to international humanitarian institutions, UN Special Rapporteurs, and independent human rights investigators to Jammu and Kashmir is well known. The international community must bring to bear moral and economic pressure on India to recognize the paramountcy of the rights of the people of Jammu and Kashmir in this armed conflict, and its obligations to them under international humanitarian and human rights law.

In this context, IPTK and APDP urgently recommend that:

- i. Given India's continuing non signing/ratification of the Rome Statute of the International Criminal Court, and its unwillingness to investigate human rights violations by its forces in Jammu and Kashmir, the UN security Council, exercise its power to refer the situation in Jammu and Kashmir to the Prosecutor of the International Criminal Court, under Article 13 (b) of the Rome Statute, acting under its obligations to maintain international peace and security.
- ii. As an interim measure, pending or absent such referral, the United Nation Human Rights Council take cognizance of the findings, testimonies and documentary

evidence presented in this report with regard to the existence of grave, widespread and systematic human rights violations, and pervasive structures of state violence in Jammu and Kashmir, and appoint a Special Rapporteur with a specific mandate to investigate India's violations under international law, international humanitarian law and international criminal law in Jammu and Kashmir. The Special Rapporteur may be empowered to use such modalities and procedures as she may deem necessary for her mandate, as in the case of Eritrea, Cambodia, Palestinian Territories, Sudan and other such mandates.

- iii. In support of the investigations of the Special Rapporteur referred to above, Government of India take immediate and concrete measures to protect and preserve all official records, physical sites, evidentiary materials in its custody or under its care pertaining to the occurrence of human rights violations, including all such items, sites and records mentioned in this report.
- iv. Government of India ensure that material witnesses and individuals with knowledge of the occurrence of such violations, including military, police and administrative officials and victims receive protection against threats and intimidation.
- v. Government of India and Government of Jammu and Kashmir allow free access to Jammu and Kashmir, to the following Special Procedures of the UN Human Rights Council for the purpose of carrying out investigations into allegations mentioned herein, and receiving submissions from victims:
 - a. UN Working Group on arbitrary detention
 - b. UN Working Group on enforced or involuntary disappearances
 - c. UN Special Rapporteur on extra judicial, summary or arbitrary executions
 - d. UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment
 - e. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association
 - f. UN Special Rapporteur on the promotion and protection of right to freedom of opinion and expression
 - g. UN Special Rapporteur on the situation of human rights defenders
 - h. UN Special Rapporteur on the independence of judges and lawyers
 - i. UN Working Group on the use of mercenaries as a means of violating

human rights and impeding the exercise of the right of peoples' to self determination

- j. Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence
- k. Special Rapporteur on freedom of religion or belief
- l. Special Rapporteur on violence against women, its causes and consequences

- vi. Foreign governments, and their embassies/missions in India, record the names and identifying information of all alleged perpetrators listed in this report. Foreign governments ensure that these alleged perpetrators are not allowed to enter their territories. This blacklisting and travel ban would not only put pressure on India to accept its responsibilities to investigate and prosecute but would also ensure that these alleged perpetrators are not allowed to take sanctuary in foreign countries. In addition, any of these alleged perpetrators found to be in the territory of the foreign government should be immediately prosecuted [where universal jurisdiction laws exist] or extradited to India on grounds of being persons accused in crimes in Jammu and Kashmir.
- vii. UN Department for Peacekeeping Operations [UN-DPKO] record the names and identifying information of all alleged perpetrators listed in this report. UN-DPKO must ensure that these alleged perpetrators are not allowed to serve on UN-DPKO missions in any capacity. Further, on rejection of their applications to serve as peacekeepers, the UN-DPKO must specifically state the reason for such rejection to be their alleged involvement in crimes in Jammu and Kashmir.



CHAPTER 1: STRUCTURES OF VIOLENCE

Introduction

The structures of violence in Jammu and Kashmir are a complex interplay of army camps, intelligence agencies and numerous other armed groups.

While there is ample evidence of the violence suffered by citizens of Jammu and Kashmir in the last three decades [including in reports produced by JKCCS], we believe it is necessary now to understand such violence not as sporadic and occasional but as the consequence of an infrastructure which, in this report, we have termed the “structure of violence”. Whether as part of counter-insurgency [COIN] or otherwise, the violence is deliberate, consistent and a consequence of a system that is in place. We will detail this system of violence in the pages that follow, but wish to make clear that our primary concern here is with the role played by the armed forces, which are the central element to the “security grid” that constricts/regiments everyday life in many districts. We hold that it is the intrusive presence of this grid that is primarily responsible for the widespread violence and the systematic violation of human rights in Jammu and Kashmir.

To understand and assign responsibility for the perpetration of violence, we need to understand the actual command-and-control system and deployment of the army. Beyond individual criminal acts and omissions, it is the system that requires to be understood to be able to lead to accountability. Further, it is this system or structure that ultimately holds the basic responsibility for the violence in Jammu and Kashmir including the widespread and systematic human rights violations.

This chapter is divided into four parts: Part A- this introductory section lays out the armed forces structure and strength. Parts B and C, present two case studies of Khanabal and Tapper army camps, and part D highlights gaps and challenges that continue to remain, in terms of criminal responsibility, and questions that arise from these studies.

Part A Introduction

The Army Structure

The army works together with other armed groups such as the para-military agencies, government funded militias as well as police and intelligence agencies. In order to understand their cumulative impact, we need to understand the deployment of the army and its camps, as well as their command-and-control systems. The army in Jammu and Kashmir seems both everywhere and nowhere. On the one hand the armed forces – including the counter-insurgency forces - occupy land, ensure area domination and seek to intervene in the daily life of civilians. On the other hand there is very little by way of accessible official information on the numbers, formations and locations of the armed forces. Therefore while the public is witness to the dominant presence of the armed forces, there is no clear information on the nature and

strength of its structure, and no information is available about the deployment of these men or indeed about the vast infrastructure through which they operate.

Through our fieldwork we have been able to develop a list of major installations from the Command level to the Brigade level. There are many more camps at Battalion and Company levels but this information is yet to be collated and analyzed [though individual cases and case studies, including in this report, provide substantial information on the camps and their actions]. Some of the information has also been obtained from the regular interaction of the researchers with officials from the army, the police and from others who have, directly or indirectly, worked with the army. Therefore, while we believe this information to be authentic, there is clearly a need for further independent and impartial investigations.

The Indian army structure at the present is as follows:

- Army Headquarters / Chief of Army Staff
- Command / Army Commander
- Corps / Corps Commander
- Division / General Officer Commanding (GOC); also called Force in the case of the Rashtriya Rifles, a Counter-Insurgency force¹
- Brigade/ Brigade Commander; also called Sector / Sector Commander, in the case of the Rashtriya Rifles
- Battalion / Commanding Officer (CO)
- Company / Company Commander

Each of the above layers maintains a physical presence in the form of a Headquarter (HQ). Thus, a unit of the RR will have a Battalion HQ at a certain camp and different Companies of the Battalion will have their own camps. In addition to soldiers these camps also house personnel from Military Intelligence (MI).

Any understanding of the structure of the army will require to be understood right from the Chief of Army Staff all the way down to the individual Companies [of which there are Companies from A to Z with the G Company i.e. Ghatak being the operations company. These Companies are distributed across the headquarters, transit camps etc].

The Indian army presence in Jammu and Kashmir is divided between two Commands – Northern and Western. Northern Command controls three Corps: XIV Corps, XV Corps and XVI Corps and covers Ladakh, Kashmir Valley and most parts of Jammu district. Western Command is across a more limited geography in Jammu district and consists of only one Corps [which is not based in Jammu and Kashmir].

The forces in operation vary from Infantry, Artillery, Counter-Insurgency Forces [Rashtriya Rifles], Military Intelligence and Special Forces [also referred to as Para commandos]. As will be evident in the charts referred to at chapter end, not all these formations exist in every Corps or Command.

Chart No. 1 lays out the broad structure of the army as relevant to Jammu and Kashmir.

¹ The RR is a counter-insurgency force composed of Indian Army personnel that was created in the early 1990s and operates exclusively in Jammu and Kashmir.

Chart No. 2 shows the structure of the Divisions and Military Intelligence Units under the XIV Corps headquartered at Leh.

Chart No.3² shows the structure of the Divisions/Force, Sector/Brigades and Military Intelligence units under the XV Corps, headquartered at Badami Bagh cantonment.

Chart No.4³ shows the structure of the Divisions/Force and Sector/Brigades and Military Intelligence units under the XVI Corps, headquartered at Nagrota .

Chart No.5 shows the structure of the Divisions and Military Intelligence units under the Western Command, which has a single Corps relevant to Jammu and Kashmir .

We will also have to take into account the intelligence agencies that work for the army [reflected in the above charts], independent of RAW or IB or the local police intelligence agencies. There are four levels of intelligence agencies working with the army [as relevant to Jammu and Kashmir], with the individual detachments referred to as "DET":

- Northern Command Counter-Intelligence Unit [NCCIU]: This unit works with the different army formations under the Northern Command, and oversees other military intelligence units. Headquartered in Udhampur and headed by a Colonel, there are also three Rear Headquarters at each of the Corps HQ, at Leh (XIV Corps) Srinagar (XV Corps), and Nagrota (XVI Corps), each headed by a Lt. Colonel. The individual DETs and formations of NCCIU are at List No.1

- Western Command Counter-Intelligence Unit [WCCIU]: This unit works with the different army formations in the Western Command and has a Rear HQ in Bakshinagar, Jammu headed by a Major presently. The individual DETs and formations of WCCIU are at List No.2.

- Counter-Intelligence Unit [CIU]: This unit works with counter-insurgency forces, i.e. the RR, only in XV Corps and XVI Corps. XV Corps has two headquarters: 30 CIU, Shariefabad and 31 CIU, Awantipora, each headed by a Colonel. 16 Corps has two headquarters: CIU Akhnoor and CIU Batote, each headed by a Colonel. The individual DETs and formations of CIU are at List No.3.

- Counter-Intelligence Surveillance Unit [CISU]: This unit works with the Infantry Divisions and is headquartered in XIV Corps at Leh, XV Corps at Haft Chinar, and XVI Corps at Nagrota. In each HQ there is a Colonel. The individual DETs and formations of CISU are at List No.4.

Army strength

Regular army *Guiding numbers*

These figures are estimates; there exists no official

information on the actual strength of the army units deployed in Jammu and Kashmir. We summarize the information collected by the researchers below:

First, every Brigade/Sector is said to have a total of 4-6 Battalions. Each Battalion consists of an estimated 10 Companies. The total for a single company may be estimated at around 145.

Consequently, Battalion strength is an estimated 1160, [presuming 8 companies as a base] and is headed by a Colonel [Commanding Officer]. Each Brigade/Sector has an estimated 5 Battalions and therefore Brigade/Sector strength may be estimated at 5808 [as the Brigade/Sector headquarters staff, headed by a Brigadier, is around 8].

The strength of Division/Force Headquarters, Corp Headquarters and the actual Northern Command must be noted. Division/Force Headquarters, headed by General Officer Commanding [Major General] may be estimated at 15; Corp Headquarters, headed by a General Officer Commanding [Major General] may be estimated at 54; Command Headquarters, headed by a Lt. General may be estimated at 77.

Each DET of Military Intelligence has around 7 personnel with 1 officer in command. In addition, the following is the strength at the headquarters levels for the 4 military intelligence agencies:

- NCCIU Udhampur: There would be around 20 personnel at the headquarters. Further, at each of the three Rear headquarters there would be around 8 personnel. Therefore, the total strength at the NCCIU headquarters level would be around 44.

- WCCIU: There would be around 8 personnel at the Rear Headquarters.

- CIU: Each of the four headquarters would have around 20 personnel. Therefore, the strength at headquarters level of CIU would be 80.

- CISU: Each of the three headquarters would have around 20 personnel. Therefore, the strength at headquarters level of CISU would be 60.

Northern Command strength

The Indian army strength in Northern Command may be estimated at **356382**.

The above estimate is arrived as per the following calculations:

- XIV Corp, comprising of 3 Divisions, and a total of 9 Brigades would have strength of: 52371.

- XV Corps, comprising of 7 Divisions/Forces, and a total of 32 Brigades/Sectors would have strength of: 186015.

- XVI Corps, comprising of 7 Divisions/Forces, and a total of 20 Brigades/Sectors would have strength of: 116319⁴.

- In addition, there are two Battalions of the Special Forces [Paracommandos] operating under the Northern

2 This chart mentions the Airforce at Sector HQ Awantipora. There are in fact three air bases in Jammu and Kashmir: Awantipora, Ladakh and Udhampur. Here the Airforce has been mentioned as it is located at a Brigade location. This study does cover the structure or strength of the Airforce.

3 "Uniform" is cited widely as an operating "Force" of the Rashtriya Rifles in Jammu and Kashmir. But, the researchers could not verify its present existence, location and strength. As a result, while shown in the chart, no details are provided and it has not been included for the purposes of calculating strength/numbers of the army in Jammu and Kashmir.

4 In these calculations the Transit Camp at Brigade HQ Chowkibal has not been added as it is only a transit camp and the strength of the personnel in the Transit Camp would be accounted for elsewhere. Further, the JAKLI Centre at Old Airfield Rangreth has also not been accounted for as once again the personnel here would be accounted for as they come from other parts of Jammu and Kashmir or even from outside Jammu and Kashmir.

Command. Each of these SF battalions has 8 Columns [equivalent to Companies in regular army Battalions], each headed by a Major, and with around 80-100 personnel. Therefore, the strength of two Battalions of the Special Forces may be estimated at 1600.

Western Command strength

The Indian army strength in the Western Command that has 1 Corp, 2 Divisions and 5 Brigades [this does not include strength at Command and Corp level because they are not exclusively operational for Jammu and Kashmir] may be estimated at **29070**.

Military Intelligence agencies strength

The strength of the four [NCCIU, WCCIU, CIU, CISU]⁵ military intelligence agencies operational in Jammu and Kashmir may be estimated at **1781**.

Total army strength

The Indian army strength in Jammu and Kashmir may be estimated at **387233**. If the number of companies per battalion are presumed as 10 then the total army strength in Jammu and Kashmir may be estimated at **481576**.

Strength of other forces and agencies

The other forces functioning in Jammu and Kashmir are the para-military forces, the Jammu and Kashmir Police and the officials of the Intelligence Bureau [IB] and the Research and Analysis Wing [RAW]. Whether through case studies of Islamabad and Pattan or the individual cases analyzed in this report, there are numerous references to both the structure and actions of these forces. While the researchers have been able to gather more substantial information on the Indian army structure, is the available information on these other agencies summarised below.

Para-military forces

A wide range of para-military forces operate in Jammu and Kashmir. They are all under the Ministry of Home Affairs [MHA], Government of India. The predominant forces are the Border Security Force [BSF] and the Central Reserve Police Force [CRPF]. In addition, there are the Indo-Tibetan Border Police Force [ITBP], Central Industrial Security Force [CISF], Indian Reserve Police [IRP] and the Sashastra Seema Bal [SSB].

As in the case of the Indian army, there is little official and public information available on the above formations. In the case of SSB, the website

[<http://www.ssb.nic.in/shared/linkimages/8828.pdf>] provides an organization and command structure in

which there are said to be 5 Battalions of the SSB under its Special Operations unit in Srinagar sector [with 3 Battalions in Bhilai, Chattisgarh]. No details on strength are provided⁶. The ITBP on its website [<http://itbp.nic.in/itbpwebsite/Documents/Org%20Chart%20final%2020052015.pdf>] provides an organization structure with no information on their formations or strength in Jammu and Kashmir.

Besides the above information, the researchers have found some information with regard to CRPF, IRP, CISF and ITBP and more extensive information with regard to the BSF. The researchers have been unable to collect substantive information with regard to the SSB.

CRPF

The strength of the CRPF in Jammu and Kashmir may be estimated at **75000**⁷.

IRP

The strength of the IRP in Jammu and Kashmir may be estimated at **5500**.

5 IRP Battalions were raised in 2010, and with each Battalions comprising 1100 personnel, the above estimate has been calculated at 5500⁸. But, it is unclear how many Battalions existed before 2010, and recent news reports suggest the creation of 5 new Battalions, thereby suggesting that the strength of the IRP may in fact be greater than 5500⁹.

CISF

The CISF, tasked with protecting "major critical infrastructure installations" as per its website, is headed by a Director General in New Delhi, has a total of 7 Battalions in Jammu and Kashmir, including Uri 1st power house under National Hydro-electric Power Corporation [NHPC], Uri 2nd power house under NHPC, Baghliar power project, Chandrakote, Dulhasti power project, Dulhasti, Doda, and Kishen Ganga at Gurez, Bandipora. The strength of each Battalion is approximately 800-1000. The strength of the CISF in Jammu and Kashmir may be estimated at **7000**.

ITBP

The ITBP, a specialized mountain force with border guarding duties, is headed by a Director General in New Delhi has a total of 3 Battalions in Jammu and Kashmir, divided between headquarters in Ladakh, Kashmir and Jammu, each headed by a Colonel, Commanding Officer¹⁰.

5 Individual agencies estimated strengths are: NCCIU: 394, WCCIU: 99, CIU: 689, CISU: 599.

6 Separately, the researchers of this report sought information from the para-military groups regarding their court-martial records in Jammu and Kashmir. The SSB in its submissions, dated 1 February 2013, before the Central Information Commission stated that the SSB had been shifted out of Jammu and Kashmir following a structural change wherein the SSB ceased to report to the Cabinet Secretariat and instead reported to MHA. That the SSB ceased to operate in Jammu and Kashmir from 2001 is therefore contradicted by its own website. See also: <http://www.forceindia.net/ChangeofRole.aspx>, where it is stated that 5 SSB battalions are being pressed into service in Jammu and Kashmir [this report is from 2013].

7 See generally: <http://www.ndtv.com/india-news/internal-security-grid-intact-in-jammu-kashmir-crfp-663534>. In addition, some sources suggest that the number of battalions in Kashmir valley itself may be more than 60: Economic Times, http://articles.economictimes.indiatimes.com/2013-03-13/news/37683735_1_crfp-camp-crfp-battalions-crfp-men, 13 March 2013.

8 See generally: http://zeenews.india.com/news/jammu-and-kashmir/indian-reserve-police-battalions-raised-in-jandk_611456.html.

9 See generally: <http://www.dailyexcelsior.com/centre-approves-5-new-irp-bns-for-j-5500-youth-to-be-recruited/>.

10 But, on the ITBP website where an organization chart has been provided it appears that the ITBP is in fact headed by two DIG's – based in Ladakh and Srinagar. This might also suggest that the strength of the ITBP is in fact greater than the information collected by the researchers as a DIG ranking officer would have more than one Battalion under his control.

The strength of each Battalion is around 1000 and therefore the strength of ITBP in Jammu and Kashmir may be estimated at **3000**.

BSF

The strength of BSF in Jammu and Kashmir may be estimated at **37347**.

The BSF is the primary border guarding force in India and has had a strong presence in Jammu and Kashmir. As illustrated in Chart No. 6, the BSF is headed by the Director General in New Delhi and has three headquarters in Jammu and Kashmir: BSF HQ Humhama, Kashmir, BSF HQ Bohri/Dumana, Jammu and BSF HQ Leh, Ladakh. Each of these headquarters has staff of around 37 personnel and the total strength across three headquarters would be around 111.

Within these three headquarters there is a further division between the BSF intelligence agency [referred to as "G Branch"] and its operational Battalions – each of which have headquarters. The G Branch in turn is run through "Teams". Each Battalion headquarter is headed by a Colonel ranked officer referred to as SSP.

While not shown in the chart, each Battalion has 3 TAC headquarters which are headed by a Lt. Colonel ranked officer referred to as SP. Further, each TAC headquarter has 2-3 Companies each of which are headed by Inspector or Deputy Superintendent of Police ranked officer.

Each Company [that run from A, B onwards and include a specialized Ghatak-G Company] comprise of 120-150 personnel including 1-3 officers. Therefore, each Company may be presumed to have around 150 for the purpose of the present calculations.

Each TAC headquarters has 3-5 officers. Therefore, a TAC headquarters [including an estimated 3 Companies] would have strength of 450 [which includes the strength at the TAC headquarters].

Each Battalion headquarters has 15-20 officers. Therefore, a Battalion headquarters [that includes 3 TAC headquarters] would have strength of 1350 [which includes the strength at the Battalion headquarters].

The G Branch headquarters of the BSF is headed by a Colonel ranked officer referred to as SSP and has strength of around 50 personnel. Each Team is headed by a Lt. Colonel referred to as SP and has strength of around 10 personnel.

In addition to the above, each TAC HQ has one team of G Branch personnel, headed by a Deputy Superintendent of Police or Inspector, and the total strength of this team is 4 personnel. This strength is in addition to the TAC headquarter / Battalion headquarters strength and the G Branch Teams strength. The codes for these Teams of the G Branch are also referred to differently i.e. Team A1, Team A2 etc.

Therefore, the total strength of the BSF in Jammu and Kashmir may be broken up as follows:

- Strength at the 3 main BSF headquarters in Ladakh, Jammu and Kashmir: 111
- Strength of the 3 G Branch headquarters: 150
- Strength of the 27 Battalions of the BSF across the three headquarters: 36450
- Strength of the 30 Teams of the BSF across the three headquarters: 300
- Strength of the Teams across the 84 TAC headquarters separately: 336

Based on the above calculations, the strength of the above paramilitary in Jammu and Kashmir may be estimated at **127847**.

IB and RAW

The Indian Intelligence Bureau (IB) and Research and Analysis Wings (RAW) operate as the primary internal and external intelligence agencies for India. They are operational in Jammu and Kashmir and distributed on District and Tehsil level.

Jammu and Kashmir has a total of 82 Tehsils, and 22 Districts and the strength of the IB may be estimated at **364**.

The IB operates under the MHA and is headed by the Director based in New Delhi. The IB has a Joint Director in charge of Jammu and Kashmir who is based in Srinagar and Jammu based on the shifting of the civil secretariat. Joint Director has around 8 staff with him. Each District of Jammu and Kashmir has 1 SSP ranked officer in charge, and 4 other personnel. Therefore, at the District level the strength is 5. Each Tehsil of each District has one IB team headed by an Inspector ranked officer with 2 other officials. Therefore, each Tehsil has strength of around 3.

The strength of the RAW in Jammu and Kashmir may be estimated at **556**.

RAW operates under the Prime Minister's Office. It is the highest intelligence agency of India and is headed by the Chief of RAW, New Delhi. A Joint Director [Director General] is in charge of Jammu and Kashmir and is based in Srinagar and Jammu based on the shifting of the civil secretariat. Joint Director has around 8 staff with him. Each District of Jammu and Kashmir has 1 SSP ranked officer in charge, and 9 other personnel. Therefore at the District level the strength is 10. Each Tehsil of each District has a RAW team headed by an Inspector ranked officer with 3 other officials. Therefore, each Tehsil has strength of around 4.

Therefore, the estimate strength of the IB and RAW would be **920**.

Jammu and Kashmir Police

The strength of the Jammu and Kashmir Police may be estimated at: **114071**.

The Jammu and Kashmir police, headed by the Director General of Police is spread across Jammu and Kashmir through its various formations including its own intelligence agency the Criminal Investigation

Department [CID] which comprises of Counter-Insurgency Kashmir/Jammu [CIK and CIJ] and Special Branch Kashmir and Jammu [SBK and SBJ]. Specialized wings include the Armed Police, Technical Wing, Crime Branch etc. The Jammu and Kashmir Police website [at <http://jkpolice.gov.in/about-jammu-kashmir-police/police-formations.htm>] summarizes its own structure as follows:

The J&K State has been divided into two (02) Zones, Jammu Zone and Kashmir Zone, each headed by a Zonal Inspector General of Police (IGP) who is overall In-charge of law and order situation in the respective zone. The two zones are further sub-divided into Ranges, each headed by an officer of the rank of a Dy. Inspector General of Police (DIG). Presently, there are six (07) Ranges, four (04) in Jammu Zone (Jammu-Kathua, Rajouri-Poonch, Udhampur-Reasi and Doda-Kishtwar Ranges) and three (03) in Kashmir Zone (Central Kashmir, North Kashmir and South Kashmir Ranges). The Range DIGs supervise the police administration in the Districts, each of which is headed by an officer of the rank of Superintendent of Police (SP)/ Sr. Superintendent of Police (SSP). The Jammu Region has nine (10) Police Districts (Jammu, Samba, Kathua, Udhampur, Reasi, Rajouri, Poonch, Doda, Kishtwar and Ramban Districts) while the Kashmir Region has twelve (15) Police Districts (Srinagar, Ganderbal, Budgam, Pulwama, Anantang, Kulgam, Shopian, Awantipora, Baramulla, Sopore, Bandipora, Kupwara, Handwara, Leh and Kargil Districts). The District SPs/SSPs are assisted by one or more Additional Superintendents of Police/Asstt./Dy. Superintendents of Police in the discharge of their duties. To bring the police administration nearer to the people, Districts have further been divided into Sub divisions, Police Stations and Police Posts/ Divisions. The sub-Divisions are headed by officers of the rank of Assistant / Deputy Superintendent of Police. Presently, we have a total of 193 Police Stations (including two Women Police Stations one each at Srinagar and Jammu) and 158 Police Posts/Divisions in the State of J&K manned by Police personnel of the rank of Inspectors, Sub-Inspectors, Asstt. Sub-Inspectors, Head Constables, Selection Grade Constables and Constables.

There is, at the Headquarters of each district, an Armed Reserve contingent under the charge of a Gazetted officer of the rank of Dy.SP to meet contingencies like leave / sickness etc. and to perform other miscellaneous duties in the district like armed and unarmed guards, escort of treasuries, prisoners/ under trials and the like

The Jammu and Kashmir police website makes no mention of the Special Operations Group [SOG] - the counter-insurgency wing of the police. The SOG in each District has an operational structure but still falls within the supervisions of the District SP and in 2003 was "assimilated" into the regular police force as per a government notification.

As per statistics provided by the Bureau of Police Research and Development [BPR&D], Ministry Of Home Affairs (MHA), the strength of Jammu and Kashmir Police as on 1 January 2009 was 82,721 [this figure did not include Special Police Officers – SPOs]¹¹. In addition, the Jammu and Kashmir Chief Minister stated on 12 March 2015 in the Legislative Council that 25,474 SPOs were presently working in different units of the Jammu and Kashmir Police. Jammu and Kashmir Chief Minister stated in another written reply in the Legislative Council in march 2015, that 2376 SPO's had been absorbed in the police department.

Besides this there have been special recruitment drives by Director Generals of Police since 2009 onwards to absorb stone pelting youth into the police, in addition to the normal recruitments by the department. In October 2012, then Jammu and Kashmir Chief Minister stated in a written reply in the Legislative Assembly that 3000 youth had been recruited into the police department in 16 special recruitment drives since 2010. In addition, from media sources, estimated 500 police personnel were recruited into the police between mid-2014 and [no recruitment figures could be ascertained for the period from October 2012 to mid 2014].

Village Defence Committees [VDCs]

VDC's were formed as per the Jammu and Kashmir Home Department order no. Home 293 of 1995 dated 30 September 1995. The aim of VDCs in the 30 September 1995 order, para 3, is stated as being to provide defence to the village and to check trans-border movement. Further, in the conclusion, at Para 11, the Government states that "Above all, it is a manifestation of the will of the people to actively participate in the efforts to thwart the threat being posed to the national security and integrity". As per the then Jammu and Kashmir Chief Minister in April 2013 in the Legislative Assembly, **26,567** persons were working with the VDCs in 10 districts of Jammu division and Leh District of Ladakh.

Total strength of other forces and agencies

The estimated strength, based on available limited information, of the para-military, Jammu and Kashmir Police, VDC's and non-military intelligence agencies would therefore be: **269405**.

Total Strength of Indian forces in Jammu and Kashmir

Based on the above calculations, the estimated strength of the forces in Jammu and Kashmir may be placed at: **656638**. If the number of companies per army Battalion are presumed at 10, the estimated strength of the total forces in Jammu and Kashmir may be placed at **750981**.

As an illustration of how individual parts of the structure detailed above operate, Part B & Part C of this chapter analyse two camps: Tapper [with emphasis on the Palhallan army camp] and Khanabal. Both camps – which are presently Sector Headquarters – control and exert influence over a vast area.

This report examines the effects of the presence of these

11 This figure is presumed to include its intelligence wing the CID headed by an inspector General of Police, CID. Each police station has a team of intelligence personnel of the CID's two branches [Counter-insurgency and Special Branch] headed by an Assistant Sub-Inspector or Sub-inspector and 2 other police personnel. So the CIK/CIJ would have a total of 3 personnel as would the SBK/SBJ.

camps, and the operational impunity of the personnel based in them, by limiting itself to specific villages within the jurisdiction of these camps. Through extensive field work, surveys and official information, the nature of violence, the structure in operation and the stories of the people living within the jurisdiction of these camps are told. The camps that fall within these two Sector Headquarters are shown in Chart No. 7.

Practices and operating procedures

In the decade of the 1990s and after, the massive increase in the number of military personnel in Jammu and Kashmir was accompanied by the development of so many bunkers, camps and restricted zones that it became clear that such operational infrastructure was key to strategic area domination. Armed camps of varying sizes exist everywhere that Kashmiris live, and their presence—and the movement of vehicles and soldiers from them—is a constant reminder of the power of the Indian state. Civilians in these areas are always conscious of just how close they are to a military apparatus whose aggressive authority, supposedly designed to protect their interests, is often directed against them.

A structural feature of command responsibility in Jammu and Kashmir, is that of the Unified Headquarters, which ostensibly places the armed forces and Intelligence agencies under the supervision of the civilian government. The Unified Headquarters created in the early 1990's is headed by the Chief Minister and includes as members the Chief Secretary, Director General of Police, Inspector General CID, Inspector General Jammu/Kashmir, Joint Director RAW, Joint Director IB, GOC 15 Corps/GOC 16 Corps, Commanding Officers of the CISU and NCCIU, Inspector General of CRPF and Commanding Officer of the G Branch, BSF. The researchers filed an RTI to the Chief Ministers Secretariat for information on the constitution, legal basis, functioning and powers of the Unified Headquarters. The only information provided was by communication dated 11 August 2015 from Zonal Police Headquarters Kashmir that between 2009 and 2015 there were only 11 meetings held. Further, all record prior to 2009 were destroyed in floods [presumably the September 2014 floods in Jammu and Kashmir]. "Nominated members of various security/intelligence/administrative departments" were present at these meetings. Lastly, that summary of the subject matter of the meetings could not be provided as the meetings were about "security concern of State". All evidence [including testimonies in this report that negate any real administrative control over the armed forces] suggests that this body is merely nominal and has never had any effective control whatsoever over the forces. It therefore appears to be a body for coordination with no effective operational power. This is clearly brought out by the fact that this body held only 11 meetings in a 6 year period: 2009-2015.

The army has used practices and operating procedures – formal or otherwise – in Jammu and Kashmir that contravene domestic and international law. But they formed, and continue to form, an integral part of army practice. This was seen across the studies of Khanabal army camp / Islamabad and Tapper army camp / Pattan.

The most invasive practice of the army has been the spread of militarization and the occupation of land, a phenomenon that feels like an invasion of peoples' lives. For example, the High Ground camp in Islamabad overlooks the town and is an illegal occupation of the land belonging to 100-150 families. No compensation or rent has been paid to them. Camps were often designed to intrude into peoples' lives—for example, when the RR established itself in Yatipora village in the late 1990's, they built their camp right in the middle of the village. Local residents recollect that this occupied area was once a playing field.

A curious feature of this occupation of land, noticed in the two case studies in Islamabad and Pattan, was the occupation of properties which once belonged to Kashmiri Pandits. The Palhallan army camp, studied closely in this report, was created by occupying a cluster of predominantly Kashmiri Pandit houses. Therefore for a period of 5-6 years the army [and other forces] controlled Palhallan and neighboring villages from civilian homes. The effect was not only material—the complete destruction of the buildings and the trees on the property—but also ideological: the villagers of Palhallan could not but associate these Pandit houses with the army and its violent presence. In the case of Islamabad town too, the CRPF and BSF camps, as well as the camps out of which government gunmen [Ikhwan mainly] operated, were/are all located in what were once Pandit homes and temples.

Area domination and forced saturation was used a strategy. It was noticed that while initially confined to central and more traditional areas [i.e. places occupied by the military from 1947 itself], through the 1990's the army spread itself to control and dominate more areas. During this spread of the army, the BSF and CRPF also began operations and numerous camps and bunkers were created.

The intrusion of the army into people's lives goes beyond the reality of their constant presence or the way in which their actions have also been an assault on the memory of shared lives. This report catalogues many of the ways in which people have experienced the presence of the armed forces as an assault on multiple fronts. Individuals and groups have been tortured and violated sexually; others have suffered what are understood to be extra-judicial executions or have simply been caused to disappear.

Perhaps the most cynical tactic of the armed forces in Jammu and Kashmir has been the use of the people of Kashmir against themselves, that is, the turning of surrendered or ex-militants against the ongoing armed resistance to Indian occupation. The Indian State's use of government gunmen – referred to in popular parlance as 'Ikhwans' after one such prominent group - detailed in this report in both the Islamabad and Pattan related section has created social ruptures whose ugly effects are being felt even today. On occasion, the State used these gunmen and then discarded them when they believed their purpose had been achieved. Some of these gunmen spoke with the researchers of the report and their testimony reveals not just their cynical exploitation by, but also their deep disillusionment with, agents of the State.

Further, they spoke of their inability to move on from their history as individuals who served the interests of government agencies against their own people. A number of these gunmen, particularly in the Pattan area, were subsequently killed, either by militants or the armed forces themselves. We hold that the Indian State must also accept responsibility for these deaths.

In another particularly destructive, and patently illegal, form of violent action, agents of the State also attacked the non-combatant families of militants. In the case of Palhallan army camp there was overwhelming evidence that the armed forces at the camp used these families as human shields by forcing them to sleep at the camp. In both Islamabad and Pattan there were consistent reports of the torture of families of militants. In fact, arrest, detention and torture of families were the standard operating procedure of the army in their war against militants. Further, whether in Pattan or Islamabad, collective punishment was used as a tactic to subjugate people, particularly if they were thought to be anti-India. In Islamabad, entire areas, for example, Cheeni Chowk, Malakhnag, Mehman Mohalla, were burnt down. In Pattan there were mass and indiscriminate attacks such as the army firing on civilians on 1 August 1990 which led to numerous deaths in Pattan. Unsurprisingly, these incidents are now part of collective memory and are spoken of in the same terms as are used for the 1991 Kunan Poshpora mass rape and torture or the 1993 Sopore massacre.

The presence of military camps also reshaped the economy of entire areas. Whether through encouraging particular kinds of business around the camps, or contracts with local businessman, the armed forces ensured their dominant presence in the everyday economy of Jammu and Kashmir. Such dominance allows them to exert a “soft” though highly effective pressure to further their ends. The effects of this sort of invasion do not form a direct part of this report but crop up in the testimonies, particularly in the experience of the shopkeepers near the Khanabal army camp. In Jammu and Kashmir, business with—and for—the army is also a weapon of war.

There is much to be learned even from such an initial survey of the forms of violence in Jammu and Kashmir: studying the footprint and practices of the military is to learn not only about the infrastructure of state violence but also about the visceral response of the people who are subjugated by this infrastructure. An understanding of how the armed forces operate makes it clear that the violence superseded [and continues to supersede] any of the formal structures – the Judiciary, the Jammu and Kashmir police or local administration – whose “normal” functioning is meant to demonstrate the success of electoral democracy and the end of war. The military infrastructure overrides all local systems of governance; therefore, to understand the forms of Indian control of Jammu and Kashmir, it is imperative to understand the myriad ways in which the military dominates civilian life.

Another practice that the case studies illustrate is the manner in which the armed forces used aliases in their operations. Invariably, they use common Kashmir Muslim names when they operate amongst civilians. While not

illegal per se, this presents a unique challenge for researchers, journalists, and activists who wish to detail the covert or illegal operations of the State. While the army would claim this to be an integral part of counter-insurgency, there is no doubt that it also allowed for, and continues to allow for, criminality with little consequence. In a clear attempt to disguise the true perpetrators of violence, the operatives of the Indian state hide their identities behind local names.

Methodology

This chapter is based on numerous field visits to two areas, Pattan and Islamabad, where testimonies were collected and subsequently analyzed. In addition, every effort has been made to acquire official information through the filing of numerous RTIs. But, the Government of Jammu and Kashmir refused to provide information on certain RTI requests. For example, in the specific case studies of Islamabad and Pattan, an RTI was filed to the Jammu and Kashmir Police seeking information on all FIRs filed in specific, listed police stations in these two areas but no information has been provided to date.

The form of information/stories collated and presented in this report have circulated amongst locals and even journalists for years now, but this report is the first attempt to systematize such information by interviewing multiple sources and correlating their accounts [whenever that is feasible.] So the point, in addition to laying out the structure of the forces in operation, is to create a database of witness testimonies that will not only leave a record for the future but which can be mined by any investigative bodies.

The researchers were also confronted with important ethical issues in the preparation of this report. In an active conflict, for us to visit communities and ask pointed questions about the causes and effects of violence risked repeating some of the coercive interrogation people already suffer. Further, those members of these communities who have been forced by the armed forces into performing acts of surveillance, betrayal or indeed violence are compromised by any investigation of violence. Researchers feared that their questions would prompt an examination of the past that could lead to further discord within communities that had been divided badly in the past. We therefore worked very hard to ask all questions sensitively and have respected the wishes of those who wished to speak to us anonymously.

Finally, while cogent and credible evidence is presented in this chapter, we hold that there is a need for independent and impartial investigations on all allegations and evidence presented in this chapter.

Notes on nomenclature- The government continues to use the name Anantnag in all its documents, but people who live there [or elsewhere] refuse to call the town anything but Islamabad, the traditional and popular name. We have therefore decided to use the name Islamabad for both the town and the district officially known as Anantnag. Across interviews in Pattan, the people remember and refer to the “Hyderbaig” camp as the Brigade/Sector Headquarters. In fact, the Brigade/Sector Headquarters was and is [in the case of Sector only] at

Tapper. As both locations are next to one another, Hyderbaig has become the popular usage. Except when quoting from, or summarizing, witness testimony, we refer to the “Tapper” camp.

Various local Pro Government militant groups including the Ikhwaan ul Muslimeen and Muslim Mujahideen (MM) are generally and collectively referred to in popular language as ‘Ikhwan’. When referring to specific groups their individual names are used in this report. However while quoting from testimonies of witnesses the popular term for pro government, that is Ikhwan or Ikhwani is used.

Part B:

Case Study 1: THE KHANABAL CAMP

The present case study analyses the Khanabal army camp with a focus on Islamabad town and some of the surrounding villages and the perpetration of violence by the army, SOG, government gunmen and the CRPF and BSF.

The areas covered by this sub-chapter are: Aangh, Akura, Bangi Nowgam, Batengo, Batpora, Brakpora, Bulbul Nowgam, Chee, Chicharpora, Dabrun, Dantar, Dialgam, Duggpora, Furrah, Guree, Harnag, Islamabad town including Khanabal, Kadapora, Kamad, Khandipahi, Krungsoo, Larkipora, Matipora, Mattan, Mirgund, Monghal, Muniwara, Nandpora, Nathpora, Nowathoo, Nunwan, Pushwara, Ruh, Sadoora, Seepan, Shitchan, Shoul, Takiya Behramshah, Uranhal.

Testimonies that were recorded, and form the basis of this study are reproduced in full at **Annexure 1**.

Khanabal Army Camp and other functionaries

The most powerful structure of violence in the above listed areas of research is the Khanabal army camp. Today, Khanabal army camp [a camp that was in operation before 1990], is garrisoned with the troops of 1 RR. Khanabal is the Sector Headquarters of Sector 1 of the RR and also has one Battalion of Sector 2 stationed there. In relation to the operations by various army groups within this area, Khanabal army camp is at the apex of the command structure. The following camps¹² fall within the control and command of the Khanabal army camp:

- i. Aishmuqam
- ii. Dialgam
- iii. High Ground [In 1992 this camp was created by forcible occupation of land that belonged to 100-150 civilian families. No compensation or rent has been provided. The illegal occupation continues to date. The camp, on a plateau, overlooks Islamabad town].
- iv. Khundroo
- v. Larkipora
- vi. Methmu-Chittergul
- vii. Moominabad

The CRPF and BSF also operate out of numerous camps based in Islamabad and surrounding areas with CRPF

more dominant. The following are the camps they operate/d from:

- i. A house of an unidentified Pandit next to the Saddar Police Station, Islamabad
- ii. Akura Mattan camp, Mattan: This camp may have started in 1990. The camp presently exists only during the time of Amarnath Yatra.
- iii. Andernag Temple, Islamabad town: This camp may have started in 1990. The camp presently continues to be located here. The Old Exchange building, adjacent to Andernag temple, was also made part of this camp. This building was vacated in 2007. It is now an abandoned building.
- iv. Animal Husbandry office, Sarnal: This camp may have started from 1994/1995. The camp presently continues to be located here.
- v. Camp at petrol pump, Khanabal: This camp may have started in 1990. The camp presently continues to be located here.
- vi. Camp at Wanpoh
- vii. Cheeni Chowk, Islamabad town: This camp was based in the house of Hridaynath Buhroo, a Kashmiri Pandit. Subsequently, the property was sold to a Kashmiri Muslim. This camp became operational in the mid-1990s until June 2009. Some locals went to burn this camp when the forces withdrew so that it would not be used as a camp again. But, the persons living in the neighboring houses asked them not to do so as their properties would also get affected. There is presently no camp at this location.
- viii. Good Eve Hotel, Islamabad: This property was a hotel. The camp over here may have started in 1990. The camp presently continues to be located here.
- ix. GPO, Islamabad town: This camp may have started in 1990. The camp presently continues to be located here.
- x. Gujjar Hostel, Khanabal: controlled by CRPF when they occupied it in 1990. This camp continues to exist though one of the buildings is now used as a Joint Interrogation Centre (JIC) by the police.
- xi. Gurtum Nag temple, Sarnal: This camp may have started in 1990. The camp presently continues to be located here.
- xii. Heewan cinema, Ashajipora, Islamabad town: This camp may have started in 1990. The camp presently continues to be located here.
- xiii. Lal Chowk, Islamabad: a building here was occupied from around 1990 until 2008.
- xiv. Residence of Late Pyarelal Handoo, a prominent Kashmiri Pandit leader, ex-MLA - National Conference, Islamabad town: This camp may have started in 1990. The forces are no longer present in this property, which also no longer belongs to the Handoo family. The forces have now occupied the Muslim Auqaf property nearby.
- xv. State Bank of India [SBI], Lal Chowk, Islamabad: This camp may have started in 1990. The camp presently continues to be located here.

The police structure in Islamabad town and surrounding areas essentially consisted of one main police station and four police posts. Saddar police station has been the main police structure since 1990. Headed by a Station House Officer [SHO], the jurisdiction of the police station is Mir Dantar, Hanji Dantar, Bangdar, certain parts of

12 It is uncertain which of these camps is a Battalion Headquarters.

Islamabad town such as Lal Chowk, Nai Basti etc. It also supervises the following posts, each headed by a Duty Officer.

- i. Police Post Bus Stand, with the jurisdiction of Islamabad town: KP road, and interior mohallas of Anchidora, SK Colony, Laizbal, Old Qazibagh, New Qazibagh, Iqbalabad. In addition, the following villages fall under this police post: Anchidora - Anzwala, Aangh, Matipora, Azadpora.
- ii. Police Post Janglatmandi, with the jurisdiction of certain parts of Islamabad town: Sherpora, Janglatmandi, Ashajipora, Moominabad. In addition, the following villages fall under this police post: Donipawa, Dabruna, Bon Dialgam, Her Dialgam, Shichan, Kamad, Chicharpura. This came into place around the year 2000.
- iii. Police Post Khanabal, with the jurisdiction of Batapora, Nathpora, Pushwara, Daggapora, Nandpora, Sepan, Khanabal Housing Colony, Munawada, Behramshah, Khandipahi, Batengo, Harnag, Shamsipora, Uranhal, Shoul. This came into place in the year 2000.
- iv. Police Post Sherbagh, with the jurisdiction of the old town area of Islamabad town: Cheeni Chowk, Malakhnag, Sher Bagh, Rishipora, Mattan adda, Dangarpura, Kadipora, Sarnal, Bakshiabad.

The Joint Interrogation Centre at Khanabal was the site of extensive torture, some of which is recounted herein as well. In the early 1990s the entire police structure – regular police and the SOG were situated at a building near the district court. In the late 1990s, the Superintendent of Police (SP) Operations of the SOG moved to a building near the Khanabal army camp. Subsequently, the entire police structure including the Deputy Inspector General (DIG), South Kashmir moved near the Khanabal army camp.

Outsourcing of counter-insurgency and human rights violations

After unsuccessfully attempting to combat the armed militancy using regular forces, the Indian State trained and armed private militias which were funded, controlled and commanded by army authorities. This report looks closely at the functioning of two such armed government groups/ factions- the Ikhwan ul Muslimeen (south Kashmir) and the Muslim Mujahideen (MM). While both the Ikhwan and MM operated in the Islamabad area, Only the MM operated in the Pattan area. The History of the emergence of both groups is outlined in this section.

The Ikhwan-ul-Muslimeen, originated from a militant outfit which earlier operated in the name of Students Liberation Front [SLF] headed by Hilal Baig. Sajad Kanue, who was from Islamabad town, was his deputy. SLF was earlier considered as the students organization of Jammu Kashmir Liberation Front [JKLF]*. Later, Hilal Baig, Sajad Kanue and their other associates drifted away from JKLF politics and reorganized themselves in the name of Ikhwan-ul-Muslimeen. It is pertinent to mention that as SLF and Ikhwan they are alleged to have carried out abductions like that of Nahida Imtiaz, daughter of Ex

Member of Parliament, Saifuddin Soz [1991], K.Doraiswamy, Chairperson of ONGC [1991], and Vice Chancellor of Kashmir University Mushir-ul-Haq and others [1990]. They boasted of supplying weapons for the 1993 Bombay serial bomb blasts. They were also alleged to be involved in bank dacoities. Maulana Abbas Ansari of the Ittehad-ul-Muslimeen, one of the constituents of All Parties Hurriyat Conference, was the political patron of the Ikhwan led by Hilal Baig.

Following the arrest of Sajad Kanue in 1993, Jan Mohammad Khan, also from Islamabad town, became the South Kashmir commander. His deputy was a person named Shabir Badoori. Javed Ahmad Rather was Battalion Commander [but he too was subsequently arrested].

According to testimonies of Ikhwan operatives, Hizbul Mujahideen (HM)** was dominant in almost all the areas adjoining Islamabad town and had made impossible the movement, of members belonging to other militant organizations, in these villages. Further, they also claim that army and CRPF had increased their area domination in Islamabad town which was a stronghold of organizations other than HM. Some Ikhwan operatives chose to leave Islamabad town for example Liyaqat Ali Khan who left for Srinagar. A few Ikhwan members joined HM.

On the other hand the government crackdown against militants led to the arrests of Sajad Kanue, Javed Ahmad Rather and many others of the Ikhwan. This led to the disintegration of the Ikhwan organizational network. Consequent to the arrests, some Ikhwan members led by Abdul Rashid Wani alias Nannaji, Liyaqat Ali Khan and others contacted and brought people together. At this time Tahir Fuf ["Stamerrer"] was a Commander, Masrat Bilal was a commander at Kulgam, Qazigund and Bashir Ahmad Malik, alias Hamid, and Abdul Hamid Rather alias Nasir were unit commanders. It is at this stage that the Ikhwan [now renamed Ikhwan-ul-Muslimoon – a change from Ikhwan-ul-Muslimeen] began working for the army. However, within a few months Shabir Badoori left Ikhwan and joined HM and was subsequently killed in an encounter with army. Initially, the Ikhwan propagated the idea that they drew upon the army for support only to contest the domination of HM and its political patron organization Jamaat-e-Islami.

The story of the emergence of the MM as an asset in the dirty war in Kashmir is different from that of the Ikhwan. MM was a breakaway group from HM which at that point of time according to Ahsan Dar founder of HM who later founded the splinter group MM, [Testimony no.3] had 6300 members. Ahsan Dar was the first Chief of HM. In late 1990 when Mohammad Yousuf Shah alias Syed Salahuddin was appointed by Jamaat-e-Islami as the patron or Supreme Commander of HM was the beginning of the conflict between Ahsan Dar and HM. In his testimony Ahsan Dar also attributes the difference with HM as stemming from the domination and interference of Jamaat-e-Islami. Yet, in his own testimony, Ahsan Dar states that he pushed Jamaat to take a decision vis-à-vis

* JKLF was the first indigenous armed group formed in the late 1980s. It declared a unilateral cease fire in 1994 and now operates as an independent Pro Freedom Political party.

** HM is the largest indigenous armed group operating in Jammu and Kashmir from the 1990s upto the present

HM when he announced in July 1990 that HM was the military wing of Jamaat-e-Islami. Ahsan Dar in 1992 with the support of Bilal Ahmad Siddiqui, an erstwhile commander of JKLF, who had been recently released, formed a new group called Mujahideen-e-Islam. Later in 1992, Ahsan Dar and Bilal Siddiqui along with other colleagues went to Pakistan to formally launch a new group with the political patronage of Professor Abdul Gani Bhat of Muslim Conference, a constituent of All Parties Hurriyat Conference. As a result in January 1993 MM was announced from Pakistan. According to the testimony of a former MM commander working for army, Fayaz Ahmad Bhat alias Tanveer [Testimony no.6], the initial strength of MM was around 350 men. Following his return from Pakistan, Ahsan Dar spent few months in Kashmir commanding the operations of MM. In December 1993, he was arrested at the house of Ghulam Mohiuddin Lone, brother of ex-Education Minister Mushtaq Lone [National Conference] at Jawahar Nagar, Srinagar.

As per testimonies of some MM operatives in the Pattan area they got in touch with Colonel Vijay Kumar of Hyderbaig camp and MM operatives in Islamabad started operating with army and police from Shehlipora, Achabal led by Ghulam Nabi Azad alias Naba Azad. Only one testimony of Fayaz Ahmad Bhat suggests that the MM operatives surrendered en masse at Baramulla Police Lines before a senior police officer P.S. Gill.

The following are the camps of the government gunmen that fell under the control and command of the Khanabal army camp, who also at times worked in cooperation with police, CRPF and others:

i. Kadipora camp, Islamabad town: This camp was stationed in the house of Chunilal, a Kashmiri Pandit. It is presently occupied by SOG and SPOs led by Jehangir Khan who was formerly a part of the Ikhwan. The shift from government gunmen – Ikhwan - to SOG/SPO took place in 2002.

ii. Janglatmandi camp, Islamabad: This camp was stationed in the house of Prem Nath Bhat, a Kashmiri Pandit. This camp ceased to exist in 2010. Following the withdrawal of the government gunmen - Ikhwan, the SOG occupied the camp. In 2010, when all forces left the house, some locals attacked the house to ensure that it was not turned into a camp again. This property has now been purchased by someone else.

iii. Forest Office, DFO, Khanabal: This camp was operated by the MM and was commanded by Mohammad Shafi Sofi. Ghulam Nabi Azad also worked from here. It ceased to exist as a camp in the late 1990s.

iv. Sadoora camp: This Ikhwan camp operated under the Larkipora army camp from 1995 to 2003 in the house of Mohammad Yousuf Beg. The house was forcibly occupied.

v. Guree camp: The camp was situated just on the periphery of the Islamabad town, in the vicinity of Khanabal army camp. Many operatives of Ikhwan were recruited from this village.

vi. Wanpoh camp: This Ikhwan camp was headed by Masrat Bilal and was stationed in the house of Razdan, a Kashmiri Pandit. It was in the vicinity of the Khanabal

army camp.

A feature of the Ikhwan encampments, similar to the CRPF/BSF, was that they were based predominantly in Kashmiri Pandit houses. Despite this, the locals in Islamabad state that Kashmiri Pandit houses were not attacked or burnt. For example, in Bakshiabad, there were seven Kashmiri Pandit houses. All are safe to date. Six of them have been sold. One was damaged in the September 2014 floods. Following this damage, a representation was given by the Mohalla Committee to the Duty Officer, Islamabad, Sherbagh, about the damage.

Structure of violence: Command Structure and Control

Having understood the position of Khanabal army camp in the larger army structure, and the different agencies – army, police and para-military, and government militias, we now attempt to understand the command and control that the Khanabal army camp had over these various groups on an everyday basis at a local level.

The Khanabal army camp, a Sector Headquarters of the RR, and the Victor Force headquarters at Awantipora are the three most important structures of military power in South Kashmir. Across conversations and testimonies, it was clear that whether it was the Ikhwan, MM, CRPF, BSF or Jammu and Kashmir Police [SOG or regular police], it was the army and specifically the Khanabal army camp had the basic control and power.

Two witnesses, Bashir Ahmad Dada [Testimony no.10] and Zafar Salati [Testimony no.8] provide examples that hint strongly at the continuous supervision of the area by Victor Force Major Generals of RR.

Bashir Dada states in his testimony that he was forced to contest the elections in 1996 [a claim contested by Liyaqat Ali Khan, Ikhwan commander, at Testimony no.4]. He states that he once told a person named Mohammad Yousuf Dar, who was sent by Liyaqat to meet with him, that he did not want to contest elections. Liyaqat then told him that the only way out was to speak to the “Boss” i.e. GOC in Awantipora, General Choudhary [who appears to be Major General Shantanu Choudhary]. Bashir Dada met him and explained his compulsions. Major General Shantanu Choudhary asked him to join but also told him that he need not necessarily do so. He also told the Ikhwan, including Liyaqat who was also present, not to trouble him.

In a separate incident, Bashir Dada states he required the intervention of the army, specifically a Captain Clifton from Victor Force, with regard to assisting Ghulam Mohammad Shakir¹³. Ghulam Mohammad Shakir, was a neighbor and teacher of Bashir Dada, who was a prominent and senior member of Jamaat-e-Islami. As he was constantly harassed by the Ikhwan, he migrated to Srinagar. But, then, suffering from cancer, he wished to return home. He sought Bashir Dada's help. Bashir Dada states that when he approached Liyaqat, he was told that Captain Clifton would have to be approached. Captain Clifton agreed and Ghulam Mohammad Shakir was allowed to return home. He died of cancer within days.

The complete involvement of the forces in the daily lives of

13 Incidentally, Liyaqat Ali Khan [Testimony No.4] identifies this individual to be Captain Clifton alias Bulbul of 31 CIU [further, in an online article, a Major Ashok “Bulbul” Clifton is referred to - <http://www.thehindu.com/opinion/editorial/the-truth-must-still-be-told/article3516277.ece>]. According to other information available to the researchers, this person is possibly [Lt. Col.] Daniel Viren Clifton (operational name: Dawood) who was first posted in Kashmir as Captain of the Military Intelligence 15 CISU between Oct 1994 and July 1997. his second posting was as a Major from February 2007 to December 2009

civilians, and the power that the army had in all areas, is perhaps most starkly brought out in the testimony of Bashir Dada on two further occasions: in the release of his brother and in the resolution of a dispute he had with Ikhwan Seth Gujar. On the first occasion, following the arrest of his brother by the BSF, Bashir Dada approached Liyaqat Ali Khan. Liyaqat took him across to his neighbor, J.P. Singh, who was reportedly SP (Operations) of the SOG. J.P. Singh in turn called up a person named “Manoj” who turned out to be an army officer who assisted in the release of Bashir Dada’s brother. On the second occasion, Ikhwan Seth Gujar misbehaved with certain guests of Bashir Dada. Following an argument, with Seth Gujar, in the presence of Liyaqat the police – R.K. Jalla and Ashkoor Wani – became involved. The matter was finally brought before a Brigadier at the Khanabal army camp. Following representations by all present, the Brigadier decided the issue in favour of Bashir Dada. This theme of army intervention, in resolving disputes between Ikhwans, civilians and other agencies including police suggests their complete penetration and dominance. This is also brought out in the testimony of Zafar Salati, in relation to a vehicle that Zafar Salati states that Liyaqat had taken from him. The dispute on this occasion was solved by Major General Kaushal at Victor Force.

The above testimony also illustrates that the army – and specifically Khanabal army camp in this area – had control and command, but at the same time was also supervised by the Victor Force Headquarters at Awantipora.

Structure, Weapons and Operations: a study of MM, Ikhwan and the State

The nature of violence in Islamabad is most obviously brought out by the manner in which the army controlled, armed, financed and directed the Ikhwan and MM. While the history of both MM and Ikhwan has been detailed above, this section spells out further the nature of that connection and the supremacy of the army in the area.

Before considering the testimony of the Ikhwan and MM operatives themselves, one may consider the evidence of Mohammad Syed Shah [Testimony no.11]. Syed Shah is an ex-MLA and brother of Shabir Ahmad Shah, Then chief of Peoples League. He states that the Ikhwan was sponsored by the army. As one proof of this he points to the fact that Tahir Sheikh, previously of the Ikhwan, is presently with the Territorial Army. Further, he states that whenever anyone was arrested by the Ikhwan, he had to seek the assistance of the army for their release. Young men detained by Ikhwan were always sent to Khanabal army camp. He states that he even saw Mohammad Shafi Sofi, MM commander, at the army camp which is also important evidence to suggest that even if the MM was controlled using the police, the army was always, ultimately, in command and control.

Liyaqat Ali Khan, as the then head of the Ikhwan, provides important testimony on the control of the army. He states that the formation of Ikhwan – end 1994 - and their relationship with the army emerged through a meeting with a Brigadier at the Khanabal army camp: M.P. Singh. For the initial six-eight months, Brigadier M.P. Singh was the person they met. An entire system was set up which included individual groupings/teams of Ikhwan across South Kashmir, reporting to individual camps. But, ultimately the entire structure was headed by Liyaqat himself and he was in constant contact with the army including by having regular meetings. The following

extract from the testimony of Liyaqat Ali Khan outlines the initial stage and growth of the Ikhwan:

M.P. Singh was the initial contact. Initial six or eight months we had contact with him. But then the Ikhwan spread like fire. Tral, Pahalgam...various places. Boys joined in. They joined from Al-Jehad, JKLF etc. We reached a strength of 500 within 6 months. They all were working under our command. We also reached Qazigund where 2 Sector was, Kulgam had 3 Sector. In the beginning no one was sure we would survive.

The control of the army, and Liyaqat's own position, is explained by Liyaqat when he states that when he went to Victor Force and met the Major General he was told that he was like one Sector all by himself. he states that the Core Commander referred to him as a “Sector” of the army. Liyaqat also got involved in the political process and states that for political issues he dealt with a “General Dhillon” at XV Corps and subsequently he dealt with a “General Kishan Pal”. At Victor Force he dealt with “General Shantanu Choudhary”. He was also constantly in touch with Home Minister and other government functionaries in New Delhi. At its peak, the Ikhwan had 500 boys involved in its operations. The value of the Ikhwan, and indeed Liyaqat himself, for the army is best explained in his own words:

What the force got most from us- because we were local and knew militants – was that we could connect the army to the local people. People became informers. Every day we would get 5-6 bits of information. Our manpower was too few to handle the information. The biggest benefit from us was therefore intelligence gathering. We also used to assist the army in operations – again where to go and which house to go to was our work. The army itself did the actions. We used to route information through wireless systems. We also had access to various places. As things spread – we also had local commanders in different places. There were our boys everywhere. We facilitated all this. Boys were communicating with individual camps in the area. So we had for example area A – we had 5-6 boys. They were given weapons. By then we were dealing with the Corp commanders and I did not have to be on the ground anymore. By 1996 – I was almost in politics. When I used to go to Victor Force – the Commander used to say he had four commanders – 1 sector, 2 sector, 3 sector and Liyaqat.

Liyaqat states that the funding for the Ikhwan came through the GOC, XV Corps and specifically he names General Kishan Pal. He states that initially it was Rs. 3000 per Ikhwan but later it was brought down to the same level as the SPOs. Arms and ammunition were provided by the army. On joint operations with the army, there was a ratio by which seized weapons/ammunitions were divided between the army and Ikhwan. Half to army and half to the Ikhwan. No weapons were provided by the army separately. Ammunition was regularly provided by the army camps.

Liyaqat confirms the testimony of other witnesses when he states that persons like Bushan Lal, Ghulam Nabi CID, and Ghulam Rasool Moori were part of his political party [Awaami Conference]. But, while others such as Sameer Darzi alias Babloo [Testimony no.7] stated that they were his advisors, Liyaqat states that he “did not need any advisors”.

Liyaqat also states that the army and Government of India had an interest in ensuring that the local administration

and the police stand up for themselves and work independently. This confirms testimony from various sources that the local police was virtually defunct in the early 1990s. Yet, what remains interesting is that this defunct police was still able to mobilize and direct the MM, albeit under army supervision. Liyaqat states that the MM was created separately much before Ikhwan but they were not as effective and had only 50-60 boys in South Kashmir under the leadership of Ghulam Naba Azad. They worked with the army as well but mostly with the police. Also, Liyaqat states that when the Ikhwan was first formed the army advised them to seek shelter at the MM Shehlipora camp. Therefore, the army was ultimately overseeing both the MM and Ikhwan.

The above testimony is corroborated by Bashir Colonel, [Testimony no.5]. He states that there were 450 members of Ikhwan and they became operational in different areas. Groups of 20-30 boys set up camps. They used to patrol and collect information and target militants. Further, he states, contradicting Liyaqat Ali Khan, that they were initially not paid any salary but only provided alcohol and ammunition. But, from 1999, until 2003, they were given salary of Rs. 2500/3000 per month and commanders received Rs. 4500. In 2003, he states that the army took back the weapons and isolated them. The specificity with which the army and Ikhwan worked out their operations is brought out by the extract quoted below where Bashir Colonel describes how they protected local sources:

When sources would give any information from any area, Ikhwan with the help of army and SOG used to cordon the area and hold crackdowns. From parade grounds we used to arrest our sources and beat them in front of locals just to avert any disclosure of their identity as informers. We used to detain sources for sometime and then would release them after getting accurate information about the hiding of militants in village. Afterwards the army and Ikhwan would cordon the identified place and launch encounter operations to kill the militants.

Sameer Darzi, alias Babloo, [Testimony no.7], also with the Ikhwan confirms that initially there was no salary for the Ikhwan but later they received Rs. 2500 per month. The ammunition was received from the army though Babloo himself never saw the ammunition being received as Tahir and Liyaqat Ali Khan would get it from the Khanabal army camp [Babloo states that he himself had no access to the Khanabal camp].

The connection between MM and the police, including the arming and financing of the MM, is testified by Fayaz Ahmad Bhat alias Tanveer, [Testimony no.6], where he states that the MM surrendered to the police and they registered their names along with their weapons and became involved in counter-insurgency. They established a camp at Shehlipora village because MM already had a stronghold in the village. All 350 MM boys [this contradicts Liyaqat's claim that the MM had limited strength] were from the same village and their chief commander was Ghulam Nabi Azad. Police returned their weapons and gave them ammunition after their 'surrender'. From 1994 the police started to provide them a salary as well. Persons of general rank were given Rs. 1500/month while the commanders and battalion commanders were paid 4500/month. The money was brought by Ghulam Nabi Azad from district police lines Islamabad. Initially, the MM worked together with Ikhwan but later there was a separation because the Ikhwan was working with multiple security agencies whereas MM was intended to mainly

work with police and SOG only.

On record, but of uncertain value, is a decision of the Press Council of India on a complaint made by Sheikh Tahir [alias Tahir Fuf] against The Himalayan Mail for publishing a story where another person had spoken on behalf of the Ikhwan and criticized the government. While ultimately the complaint was dismissed for non-prosecution, Tahir's complaint, which is reproduced below from the online decision

[http://presscouncil.nic.in/OldWebsite/Decisions/agiant_press/29.htm] is interesting as it makes it very clear that the Ikhwan worked for the army:

The complainant vide his letter dated 23rd July 2001 to the Editor, The Himalayan Mail stated that Shri Javeed Shah, to whom the statement had been credited had nothing to do with Ikhwanis, as he was not in any way connected with Ikhwanis since September, 1996. He could at best speak for the NSO which he headed. The complainant submitted that Ikhwanis are working with Indian Army and have no complaints. They are well looked after and they had not chosen to fight militancy along with Indian Army since 1994 for any pecuniary benefits, but out of sheer conviction that enemies of peace must be eliminated. Ikhwanis have been pursuing this noble goal and in the process some of them became martyrs. The complainant alleged that the accusing finger against the Ikhwanis was insulting. The complainant further stated that he immediately got in touch with the correspondent concerned as well as the Editor of 'Himalayan Mail' at Jammu-Shri Sneh Gupta. Besides, he faxed a letter to the Editor at his Jammu office on the same day. He had talked to the editor and the latter even sent another Srinagar correspondent, one Shri Maqbool Veeri alongwith a photographer to do a full story on his (the complainant's) organisation viz. "J&K. IKHWANI", but neither the letter to the editor nor the promised story ever appeared in the respondent newspaper.

Joint Operations

The clearest evidence of the structure of violence in the area of study in Islamabad emanates from the witness testimony of raids, crackdowns, intimidation and violence. Across the cases army personnel and officers led the police and government gunmen as they collectively committed crimes of extra-judicial executions, torture, enforced disappearances and sexual violence. This is most vividly brought out in the testimony of Reyaz Ahmad Khan, resident of Islamabad, which is quoted in full below:

Pin Jinn, who was with MM, was my next door neighbor in Kadipora. I still live there. This incident happened on 8 July 1995. I was sleeping in my house. It was early in the morning around 5:30 or 6:00 am, and I was in my night clothes. My mother had woken early and was praying. My grandmother was also alive then, and present in the house. There was a knock on the door. Pin Jinn came inside. Though he was our neighbor he was very arrogant with us. You cannot imagine his arrogance! That morning, he entered the house and with no explanation he began physically dragging me out. My mother, grandmother, and father intervened and asked what mistake I had committed to be treated in this way. He said he needed me for some work. He did not give me a chance to change my clothes, though I managed to put on my jeans. I was barefoot. He took me straight to the DFO (District Forest

Officer) office where the MM had a camp. He took me inside and he and others started torturing me. I cannot describe the nature of torture. I still shiver as I speak of it. He removed all my clothes. I was naked. Then they tied both hands and feet, and put a towel on my face. I was lying flat on the ground with face up. They began to drop water on my head. It was called "Paani Parade." The only thing they kept telling me was, "You have five pouches and five guns – give them to us." I said I was a student, studying in Degree College Islamabad. I was in the second year. They said, "You have a dump in your orchard in Achabal." I told them "If you know this already, why torture me? You can go and get it." After the Paani Parade, they took a broken plastic bucket and burnt it. They let the drops melt off it on my back. I had no weapons then. If I had, I would have revealed it to them. Then, they threw water on me. They cut chillis and threw them on my face. After that they put me outside in the sunshine. At this point, I abused them to their face because I wished they would kill me rather than face the torture and humiliation. Then they got a beer bottle. They inserted the neck of the bottle into my rectum. After this happened, in desperation I said I would show them the hidden weapons. I said they were hidden in our orchard in Achabal. They took me to our orchard in Achabal. There was no fencing there then. One of my dogs was tied there in our orchard. I was handcuffed from behind. I was barefoot and was bleeding because of the torture. I was not sure what to do once we had arrived, as there were no hidden weapons. I took them to a rocky part of the grounds which would take a long time to dig. They started digging. We had employed two Chowkidars (guards) on the land, and I said I would get my chowkidars to dig the pit where the weapons were buried. I told them to sit down and said I will call my workers and they will help to do it. One of the gunmen came with me to the house to fetch the workers. He had a gun with him. As I entered the steps to the house he told me to run and flee. I said "I am not a thief. If you want to kill me, you can do so" But then, I thought maybe I should run. My worker was called Qasim Khar – alias Qasim Kak. I called out for my worker, but at the same time I twisted the gunman's head and kicked him with my leg on his chest. I grabbed his gun. I tried to shoot but I could not fire. I threw the gun on the wall and started to run. I ran through my neighbor's orchard. I reached a quarry. I fell maybe some 100 feet. I don't know how I survived. I reached the road somehow, but the others had reached the road too and started firing. But I didn't stop running. I reached up to the Agricultural Office and there I collapsed. I was not hit. I wasn't sure why I fell. Two gypsies, one ambassador car and one Maruti car arrived. Even the gunman I had hit earlier came there. His name was Master. I was flat on the ground. Master came up to me– he fired at my nose directly. The bullet missed— went by just one inch away from my nose. He picked me up. They brought me back and beat me to pulp, with sticks and their guns. I told them that I had one gun in my house. I thought that this way I could return home and see my family for the last time. They said, "What if it's not there?" I said, "Then, you can kill me there." We drove back. Near police station, Naba Azad – their head based at the Shehlipora MM Headquarters, was there along with police. He told Pin Jinn – "Tiger him!" This meant "kill him". They took me home. Pin Jinn took me to my room on the ground floor. He held on to the almirah and brought it down. He asked, "Where is it?" I said "What?" He said, "You said you would

give us a gun." I abused him and said "What gun? If you want to kill me, go ahead." He told my dad, "Give me one lakh and you can take him." My father said "So many have died, if he has to live, he will. Go ahead and kill him if you want." He brought me out of the house. His mother and sister came out from their house. They told him, "We have to live here. What are you doing?" He fired at his sister-- in her direction, but not directly at her. Then they took me to the Shehlipora HQ.

Captain Chauhan, of Sector 1, arrived there. He told the gunmen, "You are chutiyaas – you can't manage to break even small kids. Give him to me." He picked me up and took me to Khanabal Camp. They started interrogations. They tied a wire to my penis. One wire was attached outside and one inside. Then they turned on the battery. One soldier came with a warfare knife, cut open my hand, put chilli on the cut and then bandaged it. The interrogation lasted from 6 pm to 2 am. There was one army man, who was kind to me, he said, "He is such a small boy." He asked me if I wanted water. He told me I was very strong. I thought if I said I want water they may think I can withstand more torture. He himself put some water in my mouth without waiting for my reply. Chauhan wasn't there when this happened. But, otherwise Chauhan was the one who was asking me questions, He was there continuously except for a one hour break. The gunmen called him "Chauhan saab" and that's why I knew his name. After the interrogation, they picked me up by my feet and hands and threw me in a truck, at 2 am. They took me back to the MM HQ. They threw me in a room. One boy asked me whether I wanted to anything to eat. It was a scheduled caste boy and he asked whether I could eat. He gave me a Brufen tablet, Cavander cigarette, and some food. It was not yet morning. At around 4:30/5 am—they picked me up, took me outside, and stripped me naked. They picked me up by tied hands. There was a pulley system from which I was suspended. I was screaming. Pin Jinn said "Why are you talking to god? Talk to Pin Jinn." I said "Saale, let me go for a minute and even in my present condition I will kill you." I wanted him to kill me. They kept hanging me, and leaving me there, then returning, removing me and hanging me up again. I was alone and screaming. The mohallawallein, (local residents of the area) also probably could not have eaten because of my screams. Around 9/9:30 am they finally returned and brought me down.

Then a DSP (Deputy Superintendent of Police) Singh from JIC arrived looking for me. He came asking for me by name. Earlier Pin Jinn came to me and said if anyone asks for me, I should deny my identity and say I am not so and so. But they didn't even come directly to me. They asked Pin Jinn. At that time "Rajiv Gandhi", a militant, was wanted. Pin Jinn lied and said, "This is Rajiv Gandhi." But then they clarified who I really was. They took me to the JIC. Singh was present in the room. SI Ramesh, SI Rashid and SI Mukesh beat me with sticks. I was given the roller treatment. They hung me upside down. I learnt that the information against me was that Nayeem was caught in Delhi and had said that Tariq Rawloo had told him that "a dump" was with me. Within 12 hours they then took me back to the MM HQ and handed me back to MM. Naba Azad came. He said "Why haven't you killed him yet?" They said army and then police came and took him away. Azad said "I will talk to them myself. You go ahead and kill him." It was 7:30 in the evening. They tied me to a chair. People threw tea at me and burnt me with cigarettes. Now

all this seemed normal. SP Operations arrived by a vehicle. He was a Hindu. He came inside. I know it was SP Ops., because the SP District normally wouldn't interfere. He got down. He came inside. Pin Jinn was just yards away. He asked for me. Pin Jinn tried to dodge the question because of what Azad had ordered. The SP Operations threatened him, "I will kill you, I have pressure on me about this boy. Even from the Governor." My uncle was an ex-minister, a cabinet minister in Sheikh Abdullah's government. His name was Mohammad Ashraf Khan. He had gone straightaway to the Governor's house and complained there, when he heard that I had been picked up. The SP picked me up and took me to the District police headquarters. There was no more beating. I was given food. At around 8/8:30pm I was handed over to my family. I went to Srinagar, got treated and then fled to Bangalore.

The above testimony shows both how the forces operated together and the superiority of the army – as brought out by the actions of Captain Chauhan. While the joint operations are a feature of numerous testimonies, and there is testimony that the army had effective control, not all actions of the forces can be explained. For example, Ashiq Hussain Narchoor [Testimony no.15] recounts his torture and how he was transferred from SOG custody to army custody for a day, only to be returned to the SOG. The purpose of this transfer is not known to the victim as he narrates :

In 2004, I was picked by SOG and RR of Khanabal camp, 42nd battalion. Sub-Inspector Rashid, DSP Operations Harmeet Singh, Kaka Battaa (two star), and SHO Shabir were involved. All four were part of SOG. SOG along with the army cordoned our house. The above named four SOG personnel entered our house and along with a few other SOG personnel took me in a Rakshak Jeep to JIC, Khanabal. The army personnel remained outside. Kaka Battaa had also beaten up a student from Kashmir University in 2007 at JIC Humhama/Cargo.

Others detained at the time were: Suhail Rashid Din, son of Abdul Rashid Din, resident of Mattan [he was with HM], Ashiq Hussain Boda [he was with HM], Altaf Hussain Mujkhal, son of Ghulam Hassan Mujkhal [he was with HM], Ghulam Rasool Najar [he was with HM], Manzoor Ahmad Bhat [he was with HM], Mukhtar Ahmad Waza [he was with HM].

At the JIC, I was tortured; I was hung upside down and was beaten on my back. My legs were stretched and a wooden roller was rolled on my legs. S.I Rashid removed my toe nails. Ramesh (one star) another SOG personnel was rolling the roller on my legs. I came to know about the names of these officers in the JIC. After 8-9 days in the JIC I was taken to the Khanabal Camp. There I was kept in the torture cell. I was tortured there as well. Methods used included putting my head under water and rolling on my legs by army personnel. I did not come to know about the names of any army personnel. Once in the camp,[SP Islamabad] Ashiq Bukhari came and asked me to produce weapons. He also beat me himself. The allegation against me was that I was a militant and used to associate with other militants, namely Ghulam Rasool Wagay alias Kach Gour and with Babar, a Pakistani militant. Ashiq Bukhari told me that they had information I used to associate with these militants. Ghulam Rasool Wagay [militant] was my neighbor. I didn't have connection with the militancy but as

he was our neighbor, we were on good terms. In the Khanabal camp I was kept for one day only and on the same evening I was brought back to JIC at about 07:00 pm. In the JIC I was detained for 18 days and then I was taken to Kot Bhalwal prison, Jammu.

The above testimony is particularly striking as it counters any suggestion that the police are unaware of army actions in their camp or vice versa. There is clearly close coordination – including in the transfer of detainees from police control to army control and back. This is also true with regard to the operations carried out by Ikhwan and the army. Across testimonies the army and Ikhwan operate together – in raids, crackdowns,(search and cordon operations), and in encounters. Bashir Ahmad Misgar [Testimony no.22] in one succinct para provides evidence across all these scenarios:

Whenever I try to count the number of times I was tortured, I almost lose count, but it was almost twenty times by Ikhwanis, Army, and SOG. My father and I were even tortured at our own house by a joint party of Ikhwan and Army from Khanabal camp. Finally we left our home and migrated to Pulwama where we rented a house and lived there for almost two years. A year after we had left our house, it was blasted by a joint party of Ikhwan and Army. Two months later my brother Tariq Ahmad was martyred in an encounter on 2 December 1997. In this encounter an Ikhwani, Fayaz Ahmad Pushu was also injured. After that our entire family came back from Pulwama and we lived with my uncle's family for one year.

Abdul Majeed Zargar [Testimony no.29] also testifies to the Ikhwan, army and police being involved in a joint operation:

In September 2005, army of 3 RR Khanabal camp Headquarters cordoned the area around my house at about 05:30 am. Army was informed by Ikhwani Tahir Fuf that there are some militants in my house. The army first sent local residents of the locality to my house, to tell the family to get out of the house and assemble in the compound. After the household people went out from the house, army along with Tahir Fuf entered the house. Tahir Fuf searched all the rooms himself. He asked my wife about the militants. My wife replied saying that there were no militants in the house. Army and Tahir Fuf broke windows and doors of my house and threw the bedding outside in the compound. He also cut the landline connection and electricity line to the house. Then the army took me to JIC Khanabal.

On the same night the army came again to my house and asked about my son namely Showkat Zarger. Showkat worked as a guard in a park, and on that night he was on duty. Army somehow came to know about this and he too was picked by the army from the park and taken to JIC Khanabal.

At JIC, both of us were tortured by a policeman called Kaka Battaa in the camp. We were hung upside down and were beaten there. Showkat was released after a few days whereas I was shifted to Mattan police station for 15 days after four days in JIC, and then to Central Jail Srinagar. From Central Jail I was taken to the Islamabad court and booked under PSA. Then I was shifted to Kot Bhalwal and was kept there for one year. Finally I was released a year later.

Repeated victimization

A standard procedure for the armed forces appears to be the repeated victimization of individuals. Whether for their political views, or their association/affiliation with certain groups (especially Jamat E Islaami) or simply their refusal to work for the system, the repeated victimization of individuals was particularly striking in Islamabad. Two testimonies, reproduced in full below, exhibit the repetitive and targeted nature of the violence.

The first testimony is that of Atif Hassan Sheikh [Testimony no.35] whose experience of torture dates back to 2006, and continues to date.

On 02 June 2006, there were protests by people of Islamabad town. I was a college student then. I was leading the protest procession. When the procession reached Khanabal, twenty four boys were arrested by Police Station Islamabad. Liyaqat was the SHO at the time. While 23 of the arrested boys were released on the same day I was kept in custody for 22 days without any FIR being filed. Finally I was released on 24 June.

In 2006, Yasin Malik started the campaign of Safar-e-Azaadi. I was arrested again on the next day of the procession. I was arrested from my house by personnel from Islamabad Police Station and kept in custody for 7-8 days. After that I was under the constant surveillance of CID and also repeatedly called by police to appear before them in the Police Station. This continued till 2008. Whenever there would be any shut down call or any procession by pro-freedom parties I would be arrested for that day.

On 25 August 2008, there was the call for Lal Chowk, Srinagar Chalo. On that day, at about 02:30 am army and SOG raided my house. Tahir who was then working with Territorial Army was also with them. They knocked the door, and when I came to open the door someone either from the SOG or army grabbed me by my hair and dragged me out. Tahir threatened me saying that he will not let me live this time. My father didn't allow the army and SOG personnel to take me away. Tahir Fuf then called SHO Bashir saying that my father is not allowing them to arrest me. The SHO himself came to our house, and my father handed me over to his custody. I was taken to the Territorial Army camp, which is in a Kashmiri Pandit's house. I was kept there for eight days, and thereafter released.

On 30 December 2008, I went to meet my fiancé along with my friend Ubaid. I was picked on the way by the local police. I was taken to central jail Srinagar. I was released after two and a half months. Meanwhile my father approached the police station for getting the report for my release on bail. There Duty Officer Khanday told him "don't ask for the report otherwise your son will be booked under PSA." Ultimately, I was released.

I got married on 17 May 2009, Friday. Then on 21st May, which is also the martyrdom anniversary of Abdul Gani Lone, Mirwaiz Moulvi Farooq and the martyrs of Hawal, I was again arrested by the Saddar Police Station, and detained for eight days. On the same night of my release, Asiya and Nelofar of Shopian were raped and killed, and I was arrested again on the next day. This time I was kept in custody till 11 June 2009. On 18 June 2009, four youth of Baramulla were killed by SOG and on the next day I was arrested again for about 50 days. I was released on 12 August 2009.

On 1 December 2009, I was arrested again and was taken to Central Jail Srinagar. I was questioned about my friend Ubaid who had left Kashmir. I was told by Duty Officer Amit of Janglatmandi police post that if I produce my friend before the police, I would be released. On 5 January 2010, I was released. After my release I went to Jammu along with my family to escape the harassment, and we came back in April. On the same day I received a call from Duty Officer Janglatmandi police post to appear in the police post. I went there with my father. Parvez was the then Duty Officer. He told my father to permanently leave our home. On the same night when I was sleeping he came to the house, and informed me that I have been booked under PSA. I was booked for protesting the martyrdom of Zahid Farooq. But I was in fact in Jammu, when protests against his killing broke out. I was sent to Central Jail on 16 April 2010. After three days, I got bail and was released.

On 21 June 2010, there was a shutdown because of the killing of Tufail Matto. On 22 June 2010 there was a strike call by Masarat Alam. I also led a protest, but there was no stone pelting. On the next day I was at my shop when I was arrested by police and sent to JIC Khanabal. There I was tortured by SOG personnel Ram Lal. I was hung upside down, my private parts and other parts of my body were given electric shocks, and a rod was inserted in my rectum. I was kept naked during the entire torture. I was kept in JIC for four days and then I was sent to Central Jail Srinagar.

On 7 July, I was booked under PSA for "provoking people" and was sent to Kot Bhalwal Jail, Jammu. On 5 December 2010 the PSA order was quashed by the Court but I was not released for a while. Meanwhile my wife gave birth to a baby girl. But the child died as my wife was in depression because of my frequent detentions.

On 7/8 November 2011, it was Eid-ul-Azha and a protest took place at Janglatmandi, Islamabad. During the protest 36 police personnel got injured. On the next day police raided my office at KP Road branch of HDFC bank. I was arrested and I lost my job as well. On 12 February I was released.

On 18 February 2013, when Afzal Guru was martyred, I was arrested again by SHO Islamabad Ishfaq Alam.

I am detained every time when ever there are any protests or any killing. Now whenever I receive a call from police, I have to appear before them.

The second testimony is that of Ishfaq Ahmad Kotwal [Testimony no.36] whose story begins when he was a child.

In 1994, when I was 12 years old I was detained by RR. This was my first arrest. I was taken from my home because I was friends with Tariq Ahmad Misgar, an HM Commander, [he was killed on 17 January 1997 in Dantar in an encounter. It was a fake encounter. Army and Ikhwan were involved. Tariq was arrested by army from Dialgam]. Tariq was 22 years old then. I used to also help him around a bit – get him food etc. After my arrest I was taken to Saddar police station by the police. I don't know who was the SHO then, but, others say it was Sonallah. I was not beaten or tortured. I was kept in lock up for two days at Sherbagh Police post. I was alone in the lock up. I was given food and was not mistreated. I was released through appeals from my family members.

The next time I was detained was in 1996, and maybe at

the time 7 RR was posted in Moominabad. There was a camp in the same location where now there is an IML girl's school. It was election time. We used to play cricket on the ground in Moominabad. One day, while playing cricket the ball bounced onto the road and accidentally broke the glass of an army vehicle. I was taken into the camp. No one else from the group was taken as I was the one fetching the ball from the road. I was tortured at the camp. There was an officer, who was called "CM". CM was a Subedar. He was infamous in the area. CM himself beat me, with sticks. He beat me the whole day in the camp out in the open. Other army personnel were watching. He finally left me at 4:00 pm. My neighbors came and released me.

Then, I was picked up again in 1999, at Verinag. I had gone to Verinag to recover some due payments for our family's crockery business. The RR camp located there [Noioora Camp] arrested me. Then there was army there but now it is a CRPF camp. At that time there were also Ikhwan present in that camp. The reason for my arrest was that Mohammad Iqbal Kotwal alias Usman Kotwal – nickname Kaka Kotwal was an Al-Jehad Commander of Islamabad and was my cousin. Another cousin, Javed Ahmad Kotwal was also in Al-Jehad. Kaka is alive, but Javed was already dead. Another reason was also because I had close contacts with Tariq Misgar. One of the Ikhwan operating from the camp then was Aijaz [he was killed sometime after this]. I was taken inside the camp and handed over to the army, by the Ikhwan. I was tortured by army personnel. The methods of torture included, removing my toe nails, burning my back, beatings on the back. They also stuck a heated needle into my penis. I was made to sit on a lit stove. They placed a "blue lamp" on the heels of my feet. I was released on the evening of the same day. I didn't tell my family what had happened immediately, and applied some first aid on my own on my injuries. Later, I felt dizzy and went to district hospital for treatment. My family members found out about the torture through the doctors at the district hospital. I was then taken to Soura Hospital where I was admitted for treatment for one month. After I was released, I had to lie on my back in bed for 9 months. I was confined to only one room for 9 months. I got bed sores as well. A medicated sheet was brought from the hospital. I started improving, and regained my mobility gradually. Policemen from police post Sherbagh used to come to the house and ask me questions. Policemen from Saddar police station used to also come. I used to be regularly called to the camp for marking my "attendance".

In 2005, on Eid-ul-Fitr there was a fight in Sherbagh. Two boys fought and a policeman intervened. I questioned the policeman who hit one of the boys. The policeman went in and called some other police post Sherbagh personnel. They came out from the police post, took me in and beat me very badly. A friend took me home by auto. I don't remember who was the Duty Officer then.

On 9 August 2008 another incident took place at the start of the protests about the Amarnath land row. This was in June. There was a procession, then there was lathi charge by police followed by stone pelting by the crowd and firing at the crowd by SOG. Three people were seriously injured. The SOG was involved. The Duty Officer of Sherbagh police post was Parvaiz at the time. I was fired at, and my right leg was injured by a rubber bullet. Ishfaq Ahmad Bhat and Atif were also injured.

There was a case registered against me.

Another FIR was filed against me in 2009 in a separate incident involving an attack on a masjid. Sections used were 148, 149, 197, 336, 427 RPC etc. However after that I was not arrested in relation to this FIR.

In 2010, the Mona Lisa sex scandal was exposed. There was a photo studio called Mona Lisa where Tahir was involved in making pornographic films on CD. The studio was owned by Pinta Parray, but Tahir was fully involved in the whole business as Tahir had contacts with the army. The films were being made for the army, and the women were also sent to the army personnel. Young women were being brought there and pornographic films were being made using them. This was going on since 1998. About 30-40 girls were involved, most of them were doing it by their own will, but some of them were trapped into it when they approached the Mona Lisa studio. Pinta Parray was blackmailed by one of his employees about this and so he approached Tahir and asked him to kill the salesman.

On 4 June 2010 during protests and stone pelting against the Mona Lisa scandal I was caught by the CRPF. I was beaten on the street itself. I fell unconscious. I was taken to the Saddar police station and then to the district hospital. I remained in coma for one month. People thought that I had been killed. A crowd gathered at the hospital to ensure police did not take me away. The police deployed a cordon at the hospital. Then the police conducted an attack on the hospital. The police had come from police lines. Duty Officer Parvez was commanding them. Many hospital patients were injured in the raid. I was taken to SKIMS, Srinagar for treatment. I could not talk for about 3 months after that.

In September 2010 when there were protests against the burning of the Quran I protested too and again, I was fired at. Officer Rani, DSP of CRPF of Animal Husbandry office, Sarnal was brought in to control crowds. The bullet grazed my right leg. I went to someone's house and got some medicine for my injury. I stayed in a house in a village and administered the medicines myself, without going to a hospital. I then went home after four days. But the injury did not heal fully and in 2012, it suddenly started leaking lot of puss and blood. I used to occasionally get stitches put on the wound but the stitches kept coming off. Finally I was taken to Soura hospital for treatment. I had surgery and I was admitted for three months and then my leg got better.

I have travel restrictions imposed by the court. Once in 2013 I was heading to Jammu but I was caught by Banihal Police and brought back. I have been wearing a support belt from last two years around my back for spinal support, due to the chronic pain.

Reprisals

Besides repeated victimization of individual, the armed forces also carried out exercises of collective punishment of communities and/or reprisals on family members of militants.

Mehrajuddin Bichoo [Testimony no.18] testifies to an important incident where the CRPF burnt down numerous shops and homes as retaliation to an attack on them:

On 27 October 1990, members of JKLF hurled a grenade on a CRPF vehicle. The vehicle upturned, causing the death of 5-6 people. CRPF Personnel started picking up the dead bodies and within a few minutes more troops of the CRPF, stationed outside Islamabad [either Andernag or Lal Chowk] arrived at the site of the incident. Abdul Gani

Sofi's and Abdul Rehman Sofi's shops were set on fire by the CRPF personnel but somehow the locals managed to extinguish the fire in these two shops. The CRPF men then set Nisar Laba's shop on fire. From a distance of about 100 feet, I could see the CRPF men pouring petrol. They poured petrol over Abdul Gani's godown, a *tambacu* (Tobacco) producer and burnt it down.

The residents of the area were now panic stricken, some of them ran away, while some still remained in the neighborhood. Suddenly, a huge group of the CRPF troops came inside my Mohalla, namely, Khwaja Mir Ali Kocha. They started firing in the air. From the third floor of my house, I saw them sprinkling gun-powder across the Mohalla. That night houses of 450 families [more than 250 individual houses] were burnt in my locality. After burning houses, the CRPF troops burnt two mosques in the area: Shah Sahib Masjid, Khankhah and Malakhnag Masjid. They kept firing in the air so that the people would not dare to extinguish the fire and even stopped the Fire Brigade from helping people. A group of ten to twelve locals, including Dr. Abdul Majid Sheikh, Mehrajuddin, Nazir Ahmed, Mohammad Ashraf Veeri, me and a couple of others tried to take out a few belongings out of my house. But it was all in vain. We didn't manage to take out anything. We just left everything there. CRPF came inside my house to catch hold of me, but I managed to hide in the kitchen. I tried to escape through the window but couldn't since it had an iron grill. People had kept their precious belongings with me, and I removed them. I just wanted to escape. My house did not get destroyed. I managed to reach Hazratbal where some arrangements had been made for the victims. One could still hear the gunshots, but it no longer scared me. I sat down at Cheeni Chowk, without slippers or sweater. The Militants asked the shopkeepers to give me clothes and slippers.

The shops destroyed were in Malakhnag, Cheeni Chowk, Shah Sahib, Khwaja Mir Ali. People whose houses were burnt (recalls the names by visualizing the geography of various lanes in the neighborhood):

Myself and my brothers, my uncle Mohammad Amin Bichoo, Ghulam Mohiuddin Chapoo, Mohammad Abdullah Bichoo, Muzaffar Ahamd Bichoo, Nazir Ahmad Kain, Mohamad Abdullah Padder, Ghulam Rasool Padder and three brothers, Abdul Gani Shah, Fayaz Ahmad Kain, Mohammad Ayoub Baldev, Ghulam Nabi Baldev, Abdul Aziz Baldev, Mohammad Ramzan Ganai, Ali Mohammad Ganai, Gul Mohammad Ganai, Mohammad Yousuf Ganai, Ghulam Nabi Laba, Mohammad Ramzan Wani, Nisar Ahmad Kain, Abdul Rashid Aggoo, Abdul Majid Tak, Mohammad Amin Tak, Ghulam Nabi Bichoo, Abdul Ahad Baba, Manzoor Ahmad Sofi had one other brother, Abdul Rashid Talak/Wani, Gulzar Ahmad Sofi, Mohammad Ramzan Misgar son of Abdul Ahad Joo, Mohammad Ramzan Misgar son of Mohammad Maqbool, Abdul Gani Tota, Mohammad Khalil Mattoo, Mohammad Ibrahim Misgar, Mohammad Shafi Kachguroo, Mohammad Hussain Mattoo, Farooq Ahmad Drabu, Mohammad Ayub Drabu, Mohammad Abbas Drabu, Mohammad Khalil Kain, Shamasuddin Misgar, Abdul Gani Misgar, Mohammad Khalil Tota, Ghulam Mohiuddin Tota, Ghulam Nabi Misgar, Showkat Ahmad Dakhlu, Nisar Ahmad Taja, Firdous Ahmad Taja, Abdul Gaffar Lachoo, Ghulam Qadir Sofi, Khursheed Ahmad Sofi, Abdul Gani Sofi, Abdul Rehman Sofi, Sonallah Jalla, Sajad Jalla, Nisar Ahmad Saudagar, Nisar Ahmad Bhat, Abdul Ahad Chapoo, Abdul Ahad

Bhat, Ghulam Ahamd Bhat, Abdul Gani Lone, Ghulam Rasool Lone, Abdul Rashid Nadaf, Mohammad Ismail Nadaf, Abdul Rashid Saudagar, Javed Ahmad Saudagar, Abdul Rahim Wani, Mohammad Anwar Wagay.

Engineer Farooq Ahmad Khan [Testimony no.19] speaks of how the forces detained him [including holding him hostage in a case of "counter kidnapping"] because his brother was a militant. The targeting of militants' families was practiced as a wide spread operational tactic contrary to international law and norms. The following testimony strikingly demonstrates the various ways in which the forces and civilian administration chose to target and coerce family members of militants:

I was first arrested in 1990 because of my brother's role in militancy. At that time my brother had already been arrested and he was later bailed out in January 1990. He then became active with SLF. In March 1989, my brother went to Pakistan for training with a group of people and returned sometime in May/June 1990. In the summer of 1990, police personnel came to our house at night and arrested my father, Ghulam Qadir Khan, my uncle Abdul Rashid Khan, my cousin, Salim-ul-Altaf Khan and me. We were blindfolded and were taken to the old airport at Gogo Land camp, Srinagar. We could hear the airplanes flying above us. Muneer Khan, was the DSP at that time, but I don't know if he was directly involved in this. We were directly taken to Gogo Land camp and not to the camp at Khanabal. We were detained at Gogo Land camp for about 10 to 12 days and were beaten mercilessly. When we were picked, my uncle wasn't even wearing his pyjamas. He was without his pants for the whole period of our detention at Gogo Land camp. None of the army officers came forward while we were beaten. Only the lower rank personnel beat us. Our blindfolds were not removed during the entire period while we were there. We were continuously tortured and were sometimes given food. We were kept in a dark room and had to climb 30/40 steps to go to the bathroom upstairs. We were tortured every day and were asked about my brother's whereabouts. Finally after about 10 to 12 days at 3pm or 4pm in the afternoon, we were dropped off near the bund on the by-pass and were asked not to remove the blindfolds. We waited for some time and could hear the vehicles moving on the road. We removed their blindfolds and realized that we were on the by-pass. We had no money, but we boarded a bus, while my uncle was still without his pants. In the bus, we met a few acquaintances who let us take their seats. That year I had finished my engineering and had just started my job at a unit of the department of PHE at Bijbehara.

In 1993 my brother and some people abducted Doraiswamy. I was on Amaranth yatra duty and when I got home that night, my father, my cousin Muzaffar Sheikh and I were arrested by the police. My cousin was picked up from another house. We were all taken to M4 at Shivpora. Police was present at the time when we were arrested but not in M4. Mehmood-ur-Rehman, Governor's advisor came to us, as did [Divisional Commissioner Kashmir]Wajahat Habibullah. The DIG [Deputy Inspector General, Police] at that time was P.S. Gill, and he also came to meet me. I was not tortured but was beaten in the beginning. They subjected me to questioning. They wanted me to establish a connection with them. They kept saying that you will get a promotion and were offering

money. Wajahat Habibullah was saying this too. I was there for 52 days. This was the same time as that of the abduction. This was counter-kidnapping by government. I knew that these were people from the administration.

The framework within which the forces viewed their retaliatory actions is brought out in the testimony of Bilal Ahmad Mir [Testimony no.20] where he recounts the killing of a father and son [the son being a militant]. The witness states:

I was present at the site of the encounter. Major Pama came and said whosoever had to die, has died and whatsoever had to be burnt, has been burnt.

Larkipora Village

Within the larger framework of the Khanabal army camp, the local SOG and the Ikhwan / MM forces are enclosed stories of individual villages and the violence inflicted upon them by functionaries of this larger system. Larkipora village provides an illustrative example of this. The researches of this report carried out a brief survey of Larkipora to understand how the system worked in an individual unit: one single village. The similarity to the larger structures was striking. Like Islamabad town which had the army, SOG and the Ikhwan/MM with various camps in place, the structure in Larkipora was quite similar. The main army camp was in the center of Larkipora and an Ikhwan camp was located in a village close by called Sadoora. The Larkipora camp falls under the command of Khanabal army camp. The Ikhwan camp in Sadoora falls under the command of Larkipora camp. Conversations in Larkipora led to a rough list of persons killed over the years, in the village. This list is produced below and gives some inkling of the intensity and nature of extreme violence systematically meted out. It should be noted that this is not a full or comprehensive list.:

- Abdul Salaam Dar, Jamaal-ud-din, both resident of Larkipora and Abdul Rehman Bhat, resident of Fatehpur were killed by Ikhwan in March 1996. Abdul Salaam Dar and Jamaal-ud-din were members of Jamaat-e-Islami.
- Mohammad Shafi Wani, son of Abdul Majid Wani, resident of Larkipora. Used as a human shield and killed in firing by the army from Larkipora camp on 18 May 2001.
- Ghulam Nabi Rather, son of Ghulam Qadir Rather, resident of Bonpur, Larkipora was tortured to death. There was a crackdown by army personnel from outside Larkipora. This was in 1993/1994. The body of the victim was found in a well subsequently after about a week. The army was either Khundroo or Khanabal camp.
- Ghulam Hassan Malik, son of Sonallah Malik, resident of Larkipora was killed in the first crackdown of Larkipora by army. It was in probably in 1991. The crackdown was at night. He went outside his house to urinate and he was shot at.
- Showkat Ahmad Khanday, son of Dilawar Khanday, originally resident of Larkipora, worked as a teacher in the Larkipora village and was killed. There was a crackdown in which 2-3 people were caught including the victim. It was a massive crackdown of 10-15 villages. The other person killed was from Shivpora – Ghulam Hassan, a tongawala. This was in 1995. In this crackdown, Farooq Hajam, a militant with HM was

also caught. He was kept tied to a Chinar tree. He had no weapons on him. He was then blown up.

- Abdul Gani Sheikh, a teacher, resident of Dialgam and a Carpenter were both killed by army of the Larkipora camp and their heads were cut as well. They were affiliated with Jamaat-e-Islami. This was maybe in 1992/1993. News of this killing created widespread fear and the Larkipora camp was widely known because of this.
- Muzamil Rather [nicknamed Janak] was tortured again by Ikhwan of Sadoora camp and he died as a result of it subsequently.

The Sadoora camp was established around 1995 and was there until 2003. It was based in the house of Mohammad Yousuf Baig, which was forcibly occupied. The camp commander, until he was killed in 2003, was Mohammad Abbas Mir, alias Colonel Jehangir. Ikhwan at Sadoora worked with the Larkipora camp. At the village the researchers were informed that prior to Ikhwan there was MM presence for a brief period. Mohammad Akbar Sheikh and his brother Abdul Rashid Sheikh from MM were active in the area. Mohammad Akbar Sheikh and his father were killed and then Abdul Rashid Sheikh left to join Naba Azad in Shehlipora.

- The following is a list of the Ikhwan at Sadoora camp, as recalled by residents:
- Mohammad Abbas Mir, alias Colonel Jehangir, son of Mohammad Khazir Mir, resident of Sadoora. Killed.
- Jehangir Malik, son of Saidullah Malik. He is the only person of the Ikhwan in Sadoora who was previously a militant. He was with HM previously. Alive.
- Manzoor Ahmad Beg, alias Sher Khan alias Manna Beg, resident of Sadoora. Alive. Presently in the Territorial army.
- Manzoor Ahmad Mir, resident of Sadoora. Alive.
- Maqsood Ahmad Shah, resident of Sadoora. Alive.
- Ghulam Shah, resident of Sadoora. Alive.
- Imtiyaz Ahmad Sofi, son of Ghulam Mohammad Shah, resident of Sadoora.
- Imtiyaz Kumar, son of Ghulam Mohammad Kumar, resident of Sadoora. He was tortured by HM militants.
- Abdul Rashid Malik, son of Ghulam Ahmad Malik, resident of Sadoora. Dead.
- Nisar Ahmad Mir, son of Ghulam Mohi-ud-din Mir, resident of Sadoora. Dead.
- Bashir Ahmad Mir, son of Ghulam Nabi Mir, resident of Sadoora. Dead.
- Abdul Rashid Sheikh, resident of Sadoora. Alive.
- Manzoor Ahmad Beg, son of Jam Beg, resident of Sadoora. Alive.
- Mohammad Amin Beg, son of Gul Beg, resident of Sadoora. Dead.
- Reyaz Ahmad Shah, resident of Sadoora. Alive. Presently in the Territorial army.
- Hilal Ahmad Mir, son of Gul Mohammad Mir, resident of Sadoora. Alive. Presently in the Territorial army.
- Ashiq Hussain Mir, son of Ali Mohammad Mir, resident of Sadoora. Alive. Presently in the Territorial army.

It was stated in the village that there were certain people from Sadoora who got employed in the Territorial army by

claiming to be ex-Ikhwanis when in fact they were never part of the Ikhwan. This was said to be the case with: Mohammad Abbas Mir, son of Ali Mohammad Mir [his brother Ashiq Hussain Mir was an Ikhwan], Mohammad Ashraf Mir, son of Abdul Aziz Mir, Ashiq Lone, son of Ghulam Mohammad Lone.

A striking testimony during the visit to Larkipora was that of Bilal Ahmad Wani [Testimony no.39] who describes the killing of his brother and the modus operandi of the army [accompanied by Ikhwan] during an encounter:

My brother Mohammad Shafi Wani was used as human shield and killed. He was aged 22. This happened on 18 May 2001.

He had finished tuitions and come home. He ate and was getting ready for Friday prayers. Meanwhile militants were caught in Kaba Marg, a near by village. He said he would go for prayers. My mother was worried because there was firing going on in Kaba Marg. There was also camp close by and she was worried that the camp personnel would come. But he went anyway and returned safely. Then he decided to go and hide in the fields as the other boys were doing. As he was going, additional forces were coming from the Larkipora camp. I was also with my brother when the army personnel came by and picked us both up. There was a Sardar Major. 36 RR was around those days.

The encounter was going on along with Ikhwan from the Sadoora camp. Manzoor Kachru was one of the Ikhwanis present. Also present were Abbas Kandoo [real name: Mohammad Abbas Sofi] who is now in Territorial Army, and Januk (Ikhwan Muzamil Rather) was also there.

As I said, the army stopped us. They said if you run we will shoot. The following boys, besides my brother and me were picked up: Tariq Ahmad Rather, son of Mohammad Yousuf Rather, Bashir Ahmad Rather, son of Ghulam Hassan Rather, Reyaz Ahmad Rather, son of Mohammad Jabbar Rather. All of us were from Larkipora. I was 16 years old then.

We were taken to Kaba Marg in an army vehicle. There was a house there. They asked us to take some explosives and keep it there. Two of the boys managed to escape during this process. I went in and the militants said that if I was doing this under compulsion I should keep the explosives to one side. I did so. Then my brother was also forced by the army to go inside the house with the explosives. He went in and left the explosives, at the same moment the militants ran. Then the army started shooting. My brother died in this process. The explosives also exploded. One army man died as he was shot by a dying militant under the rubble. In addition the following militants died: Ghulam Rasool Wani, resident of Gund, Mohammad Amin Gani, son of Ghulam Ahmad, resident of Verinag and Manzoor Ahmad Dar, son of Mohammad Sultan, resident of Nassu, Badragund. Even after my brother died they tried to give me another bomb to take inside. But my mother who had come, fought with them and she took the bomb away from me. The army people beat her and her left shoulder got injured.

The Camp Record

The Khanabal army camp, along with the other accompanying agencies and groups, perpetrated widespread and systematic violence across Islamabad. A general overview of the violence perpetrated within and

because of the Khanabal army camp is perhaps best illustrated by the testimonials of workers at the Katoo market, in Harnag, which is just adjacent to the camp. They describe numerous instances of being picked up and tortured by personnel of the Khanabal camp. For example, in 1993, they state that shopkeepers, numbering close to 200, were picked up from around the camp, including from Katoo market, and taken to the camp and tortured. The RR was then stationed at the camp. This was done because a Brigadier had been killed in Bijbehara the previous day and the RR sought to retaliate.

In another incident, the workers at the Katoo market recall the Fidayeen attack on 11 January 2000. Following this attack, for three years, the market was made to follow a timetable by the camp – opening hours were at 10:00 am and closing hours at 4:00 pm. No vehicles were allowed to stay there in the evenings. This particularly affected the business of the local community. The Ikhwan associated with the camp regularly harassed the shopkeepers. For example, they used to force them to shut their shops even when there was no call for a shutdown from the pro-freedom parties such as the Hurriyat Conference. Further, they were regularly made to pay ransom / extortion money to the Ikhwan.

In the case of Islamabad town, the heavy militarization – from Ikhwan, MM, BSF, CRPF and Police to the presence of the army, including at High Ground that overlooks the town – has led to numerous killings and other violations.

While conducting our field research in Islamabad town and adjoining areas the researchers came across the following cases of enforced disappearances, extra-judicial executions, and torture. These cases are not a comprehensive listing of the cases of violations in the area. They represent only the very limited number of cases which were narrated to the researchers by the interviewees. The attempt of this report is not to produce a comprehensive list of crimes perpetrated by the structures of violence existing in the area. But to bring in focus the patterns, scale and structure of violence. These cases should be read along with the more detailed testimonies also provided in the Annexure to the section, (Annexure 1) and the detailed list of violations at Annexure 2.

Enforced Disappearances

The following persons have been subjected to enforced disappearance and the involvement of a unit/officer is as indicated below:

- Mushtaq Ahmad Shah alias Shahbaz, son of Ghulam Nabi Shah, resident of Nai Basti, was disappeared by the army in 1996.
- Reyaz Ahmad Gilkar, son of Mohammad Subhan, resident of Dabrunna, Islamabad was disappeared on 25 April 1994 by army from Khanabal camp.
- Nazir Ahmad Malik, son of Khalil Malik, resident of Khanabal, Islamabad, was disappeared in ending January 2003 by army.
- Mohammad Qasim Khan, aged 25, son of Sattar-ud-Din Khan, resident of Cheglipora, Chattergul, Islamabad, was disappeared in 2003 by Major Pikel of 7 RR.
- Gulzar Ahmad Mir, son of Abdul Majeed Mir, resident of Bumthan Katran, Mir Bazaar, Islamabad, was disappeared on 2 June 1991 by army.

- Mohammad Ramzan Mir, son of Ghulam Rasool Mir, resident of Kadipora, Islamabad, was disappeared on 14 December 1990 by BSF.

Killings

The following persons were killed and the involvement of a unit/officer is as indicated below:

- Farooq Ahmad Sofi, who worked at a shop near the Pyarelal Handoo CRPF camp, was killed after being fired upon by CRPF personnel.
- Hilal Ahmad Nasti, son of Ali Mohammad Nasti, resident of Mohalla Syed, Kadipora, Islamabad, Mohammad Ramzan, resident of Siligam, Ghulam Qadir Bhat, resident of Hutmara, Islamabad and Farooq Ahmad Wani alias Masali, resident of Panznulla, Islamabad were killed in 1995 by army from Aishmuqam camp.
- Ishtiyag Ahmad Khanday, son of Ghulam Ahmad Khanday, resident of S.K.Colony, Islamabad, Imtiaz Ahmad Itoo, son of Abdul Ahad Itoo, resident of Watergam, Dialgam, Islamabad, Sujaat-ul-Islam Bhat (Baba) son of Mohammad Ashraf Baba, resident of Anchidora, Azadpora, Islamabad were killed on 29 June 2010 by Jammu and Kashmir police.
- Noor-ul-Amin Wani (Buhroo), aged 20-22, resident of Ashajipora, Moominabad was shot at and killed by army personnel from the High Ground camp. This incident took place in 1994-1995.
- Hilal Ahmad Nanwai, son of Kuli Nanwai, resident of Kadipora was picked up from his residence and killed by BSF Andernag Camp. The victim was associated with Hezbulla but was unarmed. The officer in charge of the BSF Andernag camp was called "Naga" and he was a three star officer.
- Four persons, resident of Ashajipora, including Farooq Ahmad Reshi, were picked up in a crackdown and killed in a staged encounter by the army.
- Zahoor Ahmad Wagay, resident of Kadipora, Mohammad Syed Najar, resident of Sarnal Payeen and Jan Mohammad Sofi, resident of Sarnal were arrested in Pathribal, Shangus and killed in Ranipora, Shangus. In addition to the army, Tahir Fuf and Liyaqat Ali Khan are alleged to have been involved in this crime.
- Ruheel Bhat, 15 years old, son of Ghulam Mohammad Bhat, resident of Islamabad was killed on 27 October 1990 by the CRPF.
- Riyaz Ahmad Wagay, a tonga driver, a close associate of Sajad Kanue [commander of the original Ikhwan-ul-Muslimeen] was killed at his home for just being an acquaintance of Sajad Kanue.
- Ishtiyag Ahmad Shah alias Darling, son of Mohammad Iqbal Shah, resident of Moominabad and Ghulam Nabi Lone were killed by RR personnel of the army on 7 September 1994.
- An unidentified boy was killed by Ikhwan for putting up posters of HM in Mattan chowk.
- Haseena, wife of Mushtaq Ahmad was shot by BSF from the camp next to the Saddar police station.
- Sameer Khan's mother was shot by a mortar shell fired from the High Ground camp in 1993.
- Aijaz Ahmad Sofi, son of Abdullah Sofi, was killed by a mortar shell fired from the High Ground camp.
- Maroof Ahmad Nath alias Raju Nath, son of Mukhtar Ahmad Nath, resident of Nathpora, Khanabal

and Bilal Ahmad Najar, son of Ghulam Mohiuddin Najar, resident Nanda Bazaar, Khanabal and Noor-Amin Dagga, son of Mohammad Amin Dagga, resident of Nai Basti, near Masjid Noor, Khanabal were killed by CRPF and police in 2010.

- Showkat Ahmad Bhat, resident of Sarnal was killed by SOG in Brakpora, Islamabad in 2004. He had shortly before his death joined HM.
- Sartaj, a Jamiat-ul-Mujahideen militant, and Showkat, a HM militant of Dabran, were pressurized several times for their involvement in militancy. Brothers of both of them were killed by Ikhwan in Qazibagh, Islamabad town in 1997. Army of High Ground camp was also said to be involved in the killing of the brothers.
- Mohammad Ashraf Baba, who was running a Darsghah [Quran school], was killed by Ikhwan in 1996.
- Mohammad Ibrahim Hakeem was killed probably by Ikhwan.
- Sajad Ahmad Najar, alias Babloo, resident of Dangerpora, was an overground worker of HM but was unarmed. In 1997/1998, the Ikhwan and army picked him up from home and killed him. His brother Ghulam Rasool Afghani was also associated with Harkat-ul-Mujahideen.
- Rais Ahmad Dar, aged 17, joined HM in 1997, and was killed in 1998 in a fake encounter in Dialgam.
- Abbas Bengali is said to have been killed by Tahir because it is alleged he used to work for Ikhwan and militants.
- Mohammad Yousuf Padder, resident of Nunwan was picked up and killed by army. He was a prominent Jamaat-e-Islami worker.
- Mohammad Munaf Beg, son of Ghulam Mohammad Beg, resident of Mehman Mohalla, Islamabad, was teacher at Hanfia college. On 28 September 1989, he was killed along with Shahjee, a salesman, and Ghulam Mohammad Misgar, both residents of Islamabad by the police.
- In August 1994, three persons were killed by army firing in Khanabal. Showkat Ahmad Baig, resident of Khanabal, states that there was a tyre burst. There was then firing by the army in reaction which resulted in the death of three persons. One person was from Bijbehara. The other was named Manzoor, and he was resident of Laran.
- CMO Dr. Mehmood, resident of Bakshiabad [migrated from Dialgam] and was abducted and killed in 1995 by Ikhwan, particularly Seth Gujjar, apparently because of being from Jamaat-e-Islami background.
- Khalid Mehmood, aged 32/33, son of Dr. Mehmood, resident of Bakshiabad, died at his residence following torture and lack of any treatment at the army camp. He died soon after his release. He had been recently married.
- Gul Mohammad Dar, resident of Brakpora, was a grassroots worker of Jamaat-e-Islami, and he was killed by army in custody in 1996/1997.
- Nisar, resident of Verinag, was picked up and killed after torture by the army in 1992.
- Abdul Razak Mir [Bachroo], ex-MLA and Jamaat-e-Islami leader, resident of Bachroo, Kulgam was killed by Ikhwan, accompanied by army, in 1997/1998.
- Ghulam Nabi Bhat, prominent Jamaat-e-Islami worker, resident of Nunwan, was killed by army in

1995. He was running many Darsghahs [Quran schools] and he was a preacher at Jamia Masjid, Mattan chowk. This Masjid is close to the Kadipora Ikhwan headquarters.

- Showkat Ahmad Bhat, son of Ghulam Qadir Bhat, resident of Sarnal Payeen, Chicken Mohalla, Islamabad, was killed on 5 August 2007. Witnesses state that he was killed by the police. Prior to his death he was tortured on numerous occasions by the Ikhwan, police and other forces.
- Bilal Ahmad Khan and his father Mohammad Yaqub Khan, resident of Hazratbal, Islamabad, were killed by the army in September 1994. Bilal Ahmad Khan was a militant and was killed in action whereas his father was killed while the army was trying to retrieve information from him regarding his son.
- Dr. Tak, father of Dr. Shahid Tak, resident of Bijbehara, was killed by Ikhwan. His wife used to run a Darsghah [Quran school] and she was from Jamaat-e-Islami family.
- Mohammad Iqbal Wani, shopkeeper at Cheeni chowk, resident of Anchidora, once had an argument with Tahir, which resulted in his killing by Tahir.
- Sheikh Mohammad Ayub, resident of Chee, Islamabad, was a Jamaat-e-Islami worker and was picked up in 1995 from Raj Bagh by the State forces and killed in custody.
- Tariq Ahmad Munjkhal was killed by the CRPF while he was part of a procession.
- Showkat Shardar, resident of Kadipora, was associated with Peoples League. He was killed by the Ikhwan on 28 July 1995.
- Musaib [Code name], resident of Sarnal, Islamabad, was with HM, but in hiding in Srinagar. He was picked up and killed in custody in 1995.
- Bashir Ahmad Shikari, a worker of Muslim Conference led by Professor Abdul Gani Bhat, was apparently killed by HM.
- Javed Ahmad Kotwal alias Javed Danny, was shot and killed in a scuffle with Babloo from Ikhwan and Sartaj from Jamiat-ul-Mujahideen.
- Ghulam Mohammad Shah, resident of Islamabad town, and father of prominent Hurriyat leader Shabir Ahmad Shah's father was killed by the police as a result of custodial torture.
- Mohammad Yousuf Sofi and Ghulam Nabi Sofi, were bakers, residents of Achabal, and were killed by Ghulam Nabi Azad as their brother, who was later arrested, Ghulam Mohammad Sofi, was with the Jamaat-e-Islami.
- Abdul Rashid Mir, resident of Brakpora, Islamabad. He was a prominent grass root worker of Jamaat-e-Islami and he was killed in custody by the army in 1996/1997.
- Nazeer A. Sheikh, aged 18, an auto driver from Brakpora was dragged by a vehicle in Achabal by MM and killed in 1995.

Torture

Instances of torture, injuries or molestation, are widespread across most localities. The following persons were tortured or injured in Islamabad town and surrounding areas:

- Fayaz Ahmad Wani, son of Late Abdul Rashid Wani, Resident of Malakhnagh, Islamabad was

tortured by Tahir and the BSF.

- Reyaz Ahmad Khan, resident of Kadipora, Islamabad, was picked up on 8 July 1995 and then tortured by Pin Jinn, from MM, under the control of Ghulam Nabi Azad, and he was also tortured by army personnel.
- Manzoor Ahmad Wani, son of Mohammad Abdullah Wani, resident of Bumthan, Mir Bazaar, Islamabad District was shot at by personnel of the Larkipora camp on 10 December 2006.
- Ishfaq Ahmad Kotwal, aged 32, son of Mohammad Rafiq Kotwal, resident of Moominabad, Islamabad, was tortured, shot at and brutalized on various occasions by State forces including the army.
- Manzoor Ahmad Bhat, son of Abdul Rashid Bhat, resident of Sarnal, Islamabad was tortured by the SOG in 2004.
- Mudasar Rashid Magray, a carpenter and resident of Islamabad, was tortured by Ramesh of 1 RR.
- Javaid Ahmad Raja, shopkeeper and resident of Cheeni Chowk, Islamabad was tortured by Ikhwan and army.
- Aadil Hussain Teeli, was a student resident of Iqbal Mohalla, Bijbehara and was tortured at JIC Islamabad and SICOP Bijbehara.
- Shuja Hussain Rafiqi, son of Ghulam Mohiuddin Rafiqi, resident of Bakshiabad, Islamabad, was tortured by the army personnel of 4 RR, High Ground camp on 4 January 1993.
- Nazir Ahmad Zargar, aged 40, son of Bashir Ahmad Zargar, resident of Dangerpora, Mattan Chowk, Islamabad, was tortured in 1993 by RR personnel from the Khanabal army camp.
- Mohammad Shafi Ahanger, son of Ghulam Nabi Ahanger, resident of Reshi Bazaar, Islamabad, and others were tortured by RR personnel of Khanabal army camp in January 1993.
- Altaf Hussain Shah (Baba) and his father Mohammad Yousuf Shah were both tortured by the Ikhwan and other forces in the early 1990's.
- Showkat Ahmad Wagay, a shopkeeper and Resident of Khanabal, Islamabad, was tortured by Tahir and others.
- Manzoor Ahmad Bhat, aged 32, an auto driver, resident of Gulshanabad, Islamabad was tortured by the SOG.
- Abdul Hameed Dar, working as a labourer and resident of Islamabad was tortured by SI Ramesh of the SOG.
- Firdous Ahmad Wagay was injured by Officer Rani of CRPF on 14 September 2010.
- Ghulam Mohammad Guroo, a National Conference supporter, was picked up in a crackdown by the RR, taken to their camp at and then to JIC Khanabal. He was also kept at SICOP, Bijbehara by BSF for thirty days. This happened in 1999 or 2000.
- Mohammad Ukash, resident of Sagam, Kokernag was tortured at JIC Khanabal.
- Arshid Sultan Bhat, was tortured five to six times between 1995 and 2004 by the Ikhwan.
- Mass torture took place towards the end of 1996, after a government transport vehicle burst near the gate of the army camp. Five to six days later, the army personnel of RR came and took people from the Katoo market and beat them. Around 150 people were also

detained. They were beaten in groups of four.

- Ali Mohammad Ahangar, aged 80, a teacher by profession was beaten by the Ikhwan. Main accused in this torture was a person nicknamed “Makaya Haput”, resident of Aishmuqam who was subsequently killed.
- Adil Guroo was tortured by Mohammad Rahi Gad, an Ikhwan. He was tortured on 8 April 2004. Adil Guroo was a ninth standard student who spoke to his friend Samia on the death of his relative. Rahi Gad overheard Adil Guroo mention this to someone else, and as Samia was also the name of his wife, he picked him up and tortured him. Rs. 40,000 was paid for his release.
- Abid Hussain Wagay, aged 27 years, son of Ghulam Hassan Wagay, resident of Ashajipora was tortured by the SOG. Abid was picked up several times by SOG from JIC Khanabal and tortured. He was alleged to be a militant but he was set free after no evidence was found against him
- Muzaffar Ahmad Sofi, resident of Islamabad. He was taken to the government quarters and tortured by Tahir and Seth Gujjar.
- Zahoor Ahmad Ganai, son of Ali Mohammad Ganai, resident of Janglatmandi, Islamabad, was tortured by the army of 2 RR. His brother Bilal Ahmad Ganai was a militant. He too was with a militant organization called Al-Jehad Force. He was first picked up by army of 2 RR and taken to High Ground camp. There he was kept naked for hours. Roller was rolled on his legs and he was given electric shocks several times. They were forcefully inserting his head into chilly powdered cold water. Then he was taken to Sector 1 RR Camp, Khanabal. There he was tortured the same way as in the High Ground Camp. Then he was taken to several jails like Amphala Jail Jammu, Central Jail Srinagar and then released from Central Jail.

Encounters

A specific form of violence that has been widespread throughout Jammu & Kashmir is that of the encounter, or extra judicial executions. The Khanabal army camp is no exception. It has carried out fake encounters for incentives and other considerations including as a method to quash all dissent and opposition. and terrorise the local population.

An RTI was filed to the Jammu and Kashmir Police seeking information and details on all encounters registered by the police in Islamabad district between 1990 and 2014. The information was not provided with the argument that it was exempted under the RTI Act. Therefore, while information was provided from all other districts of Jammu and Kashmir [including Baramulla – see the following sub-section] the concerned police officials at Islamabad denied the information. As illustrated by the RTI data regarding encounters in Pattan (See Part C below)

Information regarding encounters provides an opportunity to understand the actions of the armed forces, their presence and is particularly important from a human rights context as there have been numerous fake encounters in Jammu and Kashmir. In addition the phenomenon of encounters in Jammu and Kashmir is closely connected to that of unmarked graves as in numerous cases the police marks “militants” killed as “unidentified”.

Individual actors

The present study provides an opportunity to remember and understand not just the “structures” that were present, but also individual state actors enabled by these larger structures.

Army

The army officers who people remember serving in the area are as follows:

- i. Major General Shantanu Choudhary, GOC, Victor Force Headquarters, Awantipora. This officer is said to have been present in the early and mid 1990's at Awantipora and played a pivotal role in the Islamabad area, along with Major General Kaushal named below.
- ii. Major General Kaushal, Victor Force Headquarters, Awantipora. This officer is said to have been present in the early and mid 1990's at Awantipora.
- iii. Brigadier M.P.Singh, Khanabal army camp. This officer is said to be the first contact between the army and Ikhwan of Islamabad.
- iv. Captain Clifton, Victor Force Headquarters, Awantipora. This officer is said to have been present in the early and mid 1990's at Awantipora.
- v. Lt. Col R.S. Kataria, Khanabal army camp.
- vi. Major Pradhan, of Aishmuqam and Khanabal army camps.
- vii. Major Pama, Larkipora camp [though one witness states that he was in fact at High Ground camp].
- viii. Major Ravi Dewan, operating from Khanabal army camp [possibly in 1993].
- ix. Major Yousuf Khan [Code name], possibly at the Khanabal army camp.
- x. Subedar Rattan Singh, possibly at the Khanabal army camp.
- xi. Captain Chauhan, based at Khanabal army camp [possibly with 2 RR].
- xii. Major R.K. Singh, of the RR and based at the High Ground camp in 2005.
- xiii. Officer Ramesh, 1 RR.
- xiv. Major Ajay Choudhary.
- xv. Major Raghu, Methmu-Chittergul army camp.
- xvi. Subedar Sujan Singh, High Ground [but also worked at Khanabal camp].
- xvii. Officer George, Khanabal army camp.
- xviii. Officer “CM”, Moominabad camp.

Para Military

The BSF and CRPF officers who people remember serving the area are as follows:

- i. Officer Rajiv of the CRPF.
- ii. Officer Rani of the CRPF: she is said to have arrived 2010 and left sometime after that.
- iii. The officer in charge of the BSF Andernag camp called “Naga”.
- iv. Officer Sharma of BSF in 1993/1994.
- v. Commandant A.G. Sharma of the CRPF.

Police and SOG

The police and SOG officers who people remember serving in the area are as following:

- i. DSP of District Headquarters, Manhas, in September 1989.
- ii. SP (Operations) Zahid Malik.
- iii. SP (Operations) Altaf Ahmad Khan.
- iv. Present IG A.G. Mir. He was SP of the District from 2006 to 2008.
- v. DSP Chauhan.

- vi. R.K.Jalla. He was SP of the District from 2010 to 2013. Before this he was SP (Operations) in 1998/1999.
- vii. Ghulam Rasool Khanday, Duty Officer at Khanabal police post
- viii. DSP Noor.
- ix. Ashiq Bukhari, SP of the District from 2004 to 2006.
- x. Ashkoor Wani. He was SP of the District from 1997 to 1998 and then again from 2003 to 2004.
- xi. Farooq Khan. He was SP of the District from 1998 to 2000.
- xii. Muneer Khan. He was DSP in 1989 when Shabir Shahs father was killed in Islamabad. It is said that the police was involved in this killing. He was SP of the District from 2000 to 2001 and then again for some months in 2003.
- xiii. SHO Liyaqat
- xiv. Officer Rajesh, In-charge of the JIC
- xv. SHO Ayoub Rather
- xvi. Kaka Batta [Kashmir Pandit]: a two star police official
- xvii. Sub-Inspector Rashid, SOG
- xviii. DSP Operation Harmeet Singh, SOG
- xix. SHO Shabir, SOG
- xx. SI Ramesh, SOG
- xxi. Ram Das, SOG, JIC Khanabal
- xxii. Mukesh, SOG
- xxiii. ASI Reyaz Punjabi, SOG, JIC Khanabal

In addition to the above Lists prepared from public memory, in response to a RTI, information on the names and details of SPs present in Islamabad district, was provided by the Jammu and Kashmir police:

S.No	Name of the officer	Duration of service
1	K. Ilango	16/05/1988 to 01/02/1990
2	Charag ud Din	01/02/1990 to 12/03/1990
3	Dr. Ashok Bhan	12/03/1990 to 30/08/1992
4	A.K. Gupta	30/08/1990 to 12/09/1991
5	Mohd Shafi Wani	12/09/1991 to 02/07/1992
6	A.R. Khan	02/07/1992 to 05/05/1993
7	Mohd Amin Shah	05/05/1993 to 23/10/1995
8	Mohd Amin Bhat	23/10/1995 to 14/12/1996
9	B. Srinivas	20/12/1996 to 12/10/1997
10	Ashkoor Ahmad Wani	12/10/1997 to 12/08/1998
11	Farooq Ahmad Khan	12/08/1998 to 05/04/2000
12	Muneer Ahmad Khan	05/04/2000 to 08/12/2001
13	Ghulam Hassan Bhat	10/12/2001 to 16/01/2003
14	Muneer Ahmad Khan	06/01/2003 to 03/08/2003
15	Abdul Qayoom Manhas	01/08/2003 to 05/12/2003
16	Ashkoor Ahmad Wani	05/12/2003 to 23/06/2004
17	Syed Ashiq Hussain Bukhari	23/06/2004 to 31/05/2006
18	Abdul Gani Mir	31/05/2006 to 28/02/2008
19	Nitish Kumar	28/02/2008 to 04/03/2009
20	Showkat Malik	04/03/2009 to 19/07/2010
21	Bashir Ahmad Khan	20/07/2010 to 23/12/2010
22	R.K. Jalla	29/12/2010 to 14/12/2013
23	Sheikh Junaid Mehmood	14/12/2013 to _____ [Date not known]
24	Abdul Jabbar	Present SP

The Jammu and Kashmir Police refused to provide information in response to an RTI on names of SHOs and SP Operations in Jammu and Kashmir, including Islamabad district.

Government gunmen and Army 'Sources' (Surveillance operatives)

Below are the names and details of the main Ikhwan and MM operatives in South Kashmir, particularly Islamabad. Only some of the Ikhwan and MM listed below were predominant in the areas studied in this report.

i. Liyaqat Ali Khan alias Shafi, Hilal Haider [code name in Ikhwan-ul-Muslimoon]. Liyaqat Ali Khan was originally living with his family at Harnag and his family worked for a Kashmiri Pandit named Shubanji who owned a band saw mill. He was at the forefront of the work of the Ikhwan for the army in South Kashmir as the Ikhwan head. Liyaqat Ali Khan continues to reside in Khanabal.

ii. Abdul Rashid Wani alias Nannaji, son of Mohamamd Qasim Wani, resident of Malpora. Nannaji presently is a car dealer. Nannaji came from a poor family and initially was a militant with Ikhwan-ul-Muslimeen. He then joined Ikhwan as Supreme Commander. Tahir Sheikh alias Fuf, resident of Seepan. He is presently serving in the Territorial Army, Islamabad. He was a senior member of the Ikhwan and one of its main enforcers.

iii. Rahi Gad [Nickname], resident of Mir Dantar. He is presently working as a contractor.

iv. Mohammad Ashraf Wani alias Masrat Bilal, son of Ghulam Nabi Wani. He is nowadays a Sarpanch of the PDP. Masrat Bilal was made head of a camp in Wanpoh at the house of a Kashmiri Pandit called Razdan who had himself left Kashmir. Masrat Bilal used to operate in Wanpoh and surrounding areas.

v. Jehangir Khan. He is presently working as the incharge of the SPOs at Kadipora camp.

vi. Bashir Ahmad Malik, alias Hamid, resident of Takiya Behram Shah.

vii. Abdul Hamid Rather alias Nasir, resident of Bumthan, Mir Bazaar.

viii. Showkat, who was in charge of a camp in Aishmuqam.

ix. Altaf Padder, was in charge of a camp at Kulgam.

x. Jan Khan, resident of Furra. He was in charge of a camp at Qazigund.

xi. Ghulam Nabi Azad, MM: He was the main commander of MM in South Kashmir and ran its main camp at Shehlipora. He was killed in 2003. He was earlier part of the police.

xii. Fayaz Ahmad Bhat alias Tanveer, resident of Shehlipora, Achabal [originally from Pattan], MM: commander of MM after Ghulam Nabi Azad.

xiii. Mohammad Shafi Sofi, MM: He was in charge of the camp set up at DFO, Khanabal.

xiv. Sofi Yousuf, who was a part of MM in Srigufwara camp. He is now a BJP MLC.

xv. Gowhar Ganai, alias Gow Ganai, worked directly with the army. He worked for the camps at Khanabal, Khudwani and Panzipora. He was killed by the nephew of Abbas Bengali [who had been killed by Gowhar Ganai].

xvi. Jan Mohammad Ganai. He ran a camp at Qazigund.

The other government gunmen – Ikhwan and MM - who people remember in the area are as follows:

i. "Makaya Haput", resident of Aishmuqam.

ii. Abbas

iii. Abdul Rehman

iv. Aijaz Ahmad Turrey

v. Bitta

vi. Farooq Ahmad Magray

vii. Hamid Gabbar

viii. Jamil

ix. Javed Pandit

x. Junaid Gad alias Dantar

xi. KK alias Lighta Watul [killed]

xii. Mohammad Amin Wani alias Seth Gujjar [killed]

xiii. Mohammad Yousuf

xiv. Munir Khan

xv. Mush Tota

xvi. Nisar Ahmad Mir

xvii. Pin Jinn, MM, resident of Kadipora.

xviii. Roop Changa, resident of Cheeni Chowk

xix. Sameer Darzi alias Babloo

xx. Shabir Baba

xxi. Sham Commander

xxii. Showkat Muqam, resident of Aishmuqam

xxiii. Vit Gani, resident of Malakhnag

xxiv. Zahoor Ahmad Baba alias Jackie

xxv. Zahoor Ahmad, a source

Part C

Case Study 2: THE TAPPER CAMP

This case study analyses the Tapper army camp with a focus on Pattan town, Palhallan village, and other neighboring villages in Pattan tehsil. It focuses on the perpetration of violence by the army, SOG, government gunmen and the CRPF and BSF.

This case study focuses more specifically on the Palhallan army camp, operating under the Tapper Brigade Headquarters [which is presently a Sector Headquarters for the Rashtriya Rifles] particularly looking at effective control over the Palhallan army camp, and the crimes committed and command exercised within the areas studied.

The areas covered by this sub-chapter are: Aglar, Andergam, Behrampora, Buchoo, Chaksari, Chandrahama, Ganjipora, Ghat, Ghat Gopalan, Gohal Tengpora, Gosh Bugh, Khambyar, Lolipora, Magraypora, Mamoosa, Markipora, Mundiyyar, Nihalpora, Nillah, Pakipora, Palapora, Palhallan village, Pattan town, Shirbugh, Shirpora, Sultanpora, Trikolbal, Wanigam, Wanigam Bala, Wusan, Yatipora and Zangam.

Testimonies that were recorded, and form the basis of this study are reproduced in full at **Annexure 3**.

Palhallan Army Camp and other functionaries

While no official information exists, it appears that the Tapper army camp was a Brigade Headquarters for the regular army, at the site of the Zorawar cinema. Till 1999, RR had a limited presence in Pattan. There was a Battalion Headquarters at Hamray camp for the 15 RR headed by a Commanding Officer. Zorawar cinema [occupied in 1948 itself by the army] housed the headquarters of 192 Mountain Brigade till 1999. Later, RR's 10 Sector Headquarters replaced the 192 Mountain Brigade. We have not been able to ascertain to whom the Commanding officer of the Hamray camp reported till 1999. Today the Battalion Headquarters of the 29 RR is situated in the Yatipora village which has a Colonel as the Commanding Officer.

The Tapper army camp – whether in the form of the regular army or the RR, had within its jurisdiction the following major camps:

- i. Batpora army camp
- ii. Chaksari army camp
- iii. Dodhbug, Sultanpora army camp
- iv. Hamray army camp
- v. Khanpeth army camp
- vi. Watergam, Wagoora army camp
- vii. Wusan army camp
- viii. Zangam army camp
- ix. Palhallan army camp [no longer present]
- x. Kalantra army camp [no longer present]
- xi. Malmoo army camp, Magam [no longer present]

As this case study is more specifically focused on the Palhallan army camp, a brief history is important. The army based itself at Palhallan in December 1994. Prior to that, army control of the region was exercised by the Tapper army camp. Initially they were stationed at the Palhallan High School [Government High School Palhallan]. In March 1995, once schools reopened, the army moved to a cluster of migrant Kashmiri Pandit houses in Palhallan, an area known as Katpora. The army remained stationed there from March 1995 upto around 2000 [by some accounts the army may have been stationed there till 2001]. thereafter the control of the region was exercised by the army camp at Wusan [though the Wusan camp too co-existed in certain periods of time during the operation of the Palhallan army camp in the area]. Around six months after the army moved into the migrant Kashmiri Pandit colony, the SOG, Jammu and Kashmir Police, and the CRPF/BSF also occupied parts of the migrant Kashmiri Pandit colony. Both the SOG and CRPF left in 2001. In the same period, government gunmen [MM in the case of the Pattan area as there were no Ikhwan in the area] also moved into the camp. There were few walls within the colony. The entire colony was barricaded after the army moved in. Access on the road running through the camp area or locality – Tantraypora road – was restricted. Guests visiting the residents of the area had to first report at the camp.

Throughout the existence of the Palhallan army camp, the Major of the camp reported to the Commanding Officer of the unit stationed at the Tapper Camp – at Zorawar cinema - which served as the Battalion and Brigade headquarters. Based on numerous testimonies, it appears that Lt. Colonel Chaudhary and Colonel Vijay Kumar were at the Brigade Headquarters at the time of the MM began working with the army i.e. 1993.

Despite the above delineated jurisdiction and the presence of other camps – such as the camp in Chaksari – it is also clear that the army from a particular camp did have the ability to shift and operate outside its own jurisdiction as well. For example, in the killing of Abdul Ahad Dar, Major S.S. Sinha [alias Liyaqat Ali Khan] operated along with Major Samir from the Wusan camp. Further, in other testimonies as well, the presence of officers from Palhallan army camp is noted outside their jurisdiction.

Between March 1995 and around 2000, as per community memory, the following army units were deployed at the Palhallan camp, along with known and named officers:

- 2 Gharwal Rifles: Major Ajit Singh, alias Aziz Gharwal, was a known officer at that point
- In May/June 1995, Major Kambli, of 2 Gharwal Rifles, arrived. He was referred to as Dhandan [“Toothy”] Major. The other officer known at this point was Major V.P. Singh. The actual name of Dhandan Major is unclear as two witness stated that his real name was not Kambli but actually “Ingley”.
- In early 1996, the Gharwal Rifles were replaced by 8 Rajputana Rifles [though one witness did state that in fact the Mahar Regiment preceded the Rajputana Rifles]. Major S.S. Sinha, code name Liyaqat Ali Khan was a known officer at that point. Major Sinha was earlier stationed in Nishat, Srinagar, and he was known to have committed crimes there as well. The following testimony by Abdul Rashid Bhat [Testimony no.1] best sums up the terror instilled by Major Sinha: *There was a man called Ali who was tall and tough. He was called “Israel” – a reference to a person who takes souls and is dangerous. His full nickname was Liyaqat Ali Khan [Major S. S. Sinha]. He was a Major at the Palhallan army camp. He would come from the Palhallan army camp. Any boy taken to the Palhallan army camp was not expected to return. Ali was himself responsible for the death of about five to ten people.*
- Following the Rajputana Rifles public memory is less certain and a variety of forces are said to have existed in the area, as follows: Mahar Regiment, Jammu and Kashmir Light Infantry [JAKLI], 18 Grenadiers, 3 Gurkha Regiment [also referred to as Thapa Company; Witnesses refer to a Major “Thapa” and a “Surinder Thapa. It is uncertain if both are the same person].
- A reference is also made by a witness to a Major Behra who was supposed to have been stationed at the camp in 2000 but it is unclear which unit he belonged to. In addition to the above, some people recollect an officer named Captain Mahesh who was at the Palhallan army camp in 1999. He harassed the local people and forced participation of girls in programmes held by the army such as the Indian Independence day programme on 15 August.

The Pattan area did not have members of the Ikhwan group but had members of the MM. The history of the MM has been detailed in the previous Section on Islamabad and the Khanabal army camp. The MM killed, tortured, disappeared, extorted, and spread fear across Pattan. Further, in Palhallan one local resident stated that in around 1995 the government gunmen, on orders of the army, formed a committee to ensure people did not go to the army with their problems. This was called the Village Defence Committee. This committee included Abdul Gaffar Wani [deceased], resident of Raipora, Abdul Samad Hajam, Abdul Gaffar Kuchai [Numberdar], Mohammad Kamal-ud-din Bhat, Numberdar, Habibullah Mir, Chowkidar, Mohammad Ismail Tantray, Ghulam Nabi Tantray, Haji Abdul Aziz Dar, Mohammad Shaban Bhat, and Manzoor Naikoo. Out of the above, Ghulam Nabi Tantray and Habibullah Mir's sons were involved with the government gunmen. A local resident narrated the circumstances under which the SOG camp left Palhallan. In 2001, two SOG men

were shot in a tea shop in Palhallan. The shop was run by Ghulam Ahmad Bhat, in property owned by Wali Mohammad. Following the shooting of the SOG men, the SOG burnt shops – including those owned by Wali Mohammad, five to six shops below the Government Middle School and Masjid Abu Bakr, at New Colony. This precipitated a general strike for eighteen days with a demand that the SOG camp be transferred from the area.

The Pandit houses

An important feature of the Palhallan army camp was its location – in a cluster of migrant Kashmiri Pandit houses located in the heart of Palhallan town. There were 15-20 houses and a temple, which were later enclosed by barbed wire fencing. The army, para-military, SOG and the MM were stationed here. Presently the entire area is reduced to rubble with only a few intact houses present that were rebuilt.

The total area occupied by the camp was about 50 kanals (Approx. 6 Acres). The camp was established by occupying the home of the following Kashmiri Pandits: Shambu Nath, Omkarnath Pandita, Somnath Zutshi, Hari Krishan Razdan, family of Mohan Lal Razdan, Moti Lal Razdan, Kanya Lal Razdan, Shibani Lal Razdan, Gopinath [Nathji], Jaggar Nath, Jankinath, Shadi Lal, Triloki Nath, Mohan Lal Koul. In addition, three houses of Kashmiri Muslims were also occupied: Mohammad Akbar Bhat, Ali Mohammad Gojri and Lal Gojri. The army also built barracks for its troops in this compound. Local residents' state that the army may have paid rent to the Kashmiri Pandit families for the houses occupied. They also state that no rent was paid for the three Kashmiri Muslim houses.

Local memory is the Kashmiri Pandit families left in 1990 without informing the residents who remained behind. Though neighbors and some local residents also state that they tried to stop families from leaving. The local residents state, unequivocally, that no harm was caused to the Pandit families and that they left around the month of Ramzan. One local resident recalls meeting Avtar Krishan Koul who informed him they were going for a marriage, but did not return. Some of the Pandit families have returned in subsequent years to see their properties. Most recently, in 2010, some families returned, reoccupied their land and barricaded their property with ropes. These families were those of Somnath Zutshi, Pushkarnath Zutshi, Chunnilal Zutshi, and Jawahari Lal Zutshi. They then planted seeds as well in the land but have not returned since.

Local residents state that from 1990, when they were vacated by the Pandit families till 1995 when they were occupied by the Armed forces, houses and properties were not damaged. One local resident stated that the Pandit temple [located at the Pandit cluster of houses] was burnt by the locals in 1992 [though the Dharamshala behind it was not] following the Babri Masjid demolition. The residents of neighboring houses to the vacated houses state that Abdul Rashid Hajam alias Farhat, a local Jamaat-e-Islami leader, told the people of the area that no one should dare touch the Kashmiri Pandit property. Instead, due to lack of use, the temple deteriorated. Later, during the course of the existence of the camp, the tin roofing was stolen by government gunmen and the SOG personnel. This

further weakened the structure, which was now exposed to natural elements. The researchers of this report did not notice any burn marks on the remaining structure of the temple. The structure is presently a ruin, with some walls broken down and the frame of the window completely missing. This suggests that someone may have in fact stolen the frame, and also negates the possibility of a fire.

Local residents confirm that some of the Kashmiri Pandit houses were damaged and destroyed during the stay of the army at the camp. Militants planted a bomb in the residence of Somnath Zutshi to kill the SOG officer Mohammad Rajab who died in the attack. This house was already a weak structure and due to the attack it was destroyed. Subsequently, Somnath Zutshi's land was purchased by a local resident. In another attack DSP Kuldeep was killed in the house of Shambunath, which also partially destroyed the house. Abdul Rashid Malla, a government gunman was using the residence of Omkarnath and due to misuse and neglect this residence also became dilapidated. Malla, along with his brother, was killed subsequently elsewhere. The present Numberdar of the area, Mohammad Sultan Ganie, purchased this property and presently lives there. Subsequent to the army leaving the camp, five to six of the vacated houses were burnt down by the locals. The local residents state that this was done to ensure that the army did not return to occupy the land. Finally, the house of Hari Krishan Razdan was affected by the 2005 earthquake.

Mohammad Akbar Bhat, a teacher, who resided near the Pandit colony and whose house was occupied by the SOG, provided an account of the events relating to the Pandit colony. In addition to being a witness to the occupation of the Pandit colony, he is also a victim of torture and of his own house being forcibly occupied by the SOG. He stated that he was tortured in 1993 and 1995 by government gunmen, but not those associated with the Palhallan army camp. He was given electric shocks and the wounds from his torture required him to be operated on five times. He stated that in 1990 he went into the residence of Hari Krishan Razdan and saw them packing. Both he and Hari Krishan started crying. He asked them why they were leaving. They were quiet and they left later that night. He asserts that there were no threats against the Kashmiri Pandits in the area.

The local Numberdar Mohammad Sultan Ganie also stated that two bodies were once found dumped at the Kashmiri Pandit cremation site [which was not within the Palhallan army camp premises]. One was identified as that of a brother of a militant from Wusan. The other remained unidentified.

Structure of violence: Command Structure and Control

The effective control of Palhallan and adjoining areas rested with the Palhallan army camp [while in existence]. Contrary to the legal role of the Indian army [to be in aid of civilian power], the army in fact exercised effective control over the government gunmen, the Jammu and Kashmir police and the para-military forces in the area. Across interviews, the consensus was that the Indian army was in control of Palhallan and adjoining areas, and that no action could be taken in these areas without their knowledge. More specifically, during the existence

of the Palhallan army camp, the understanding on ground was that the Major of the camp was in charge of the local jurisdiction, and he reported to the Commanding Officer at Tapper camp.

The most direct testimony was provided by Witness B [anonymity on request of witness] who worked with the MM, under the control of the Indian army for a period of one and a half years. The detailed testimony is at Testimony no.4. While Witness B is uncertain of the dates of his engagement, based on information provided it appears he worked between 1994 and 1996. He states that when he began working he reported to Palhallan army camp [other information places this as happening at the end of 1994]. Further, he describes the command structure as follows: he would report to his commanders, who in turn reported to the Major of the camp [Palhallan army camp] who in turn reported to the Commanding Officer [a Colonel ranking officer] at the Hyderbaig Camp. Witness B states that the officer who was stationed as Major at the Baba Taing camp was subsequently shifted as Major at the Hyderbaig Camp. His name was Choudhary. Major Choudhary controlled the first commander of MM who worked for the army: Mohammad Ramzan Mian, alias Hayat Khan. But, the rank of Choudhary could not be established with certainty. While Maqsood Ahmad Mian [Testimony no.2] and Noor-ud-Din Mian [Testimony no.3], and other witnesses, refer to him as a Colonel, Witness B and other witnesses, state that the Colonel at the time was Colonel Vijay Kumar [though Witness B is less sure of the name] and in fact, Choudhary was a Major. Witness C, Testimony no.10 [anonymity on request of witness], a civilian, recalls seeing both officers at Hyderbaig in 1994 – thereby suggesting that one was ranked below the other, and in fact as he testified in further incidents, Witness C was quite clear that Choudhary was a Major and his Commanding Officer was Colonel Vijay Kumar. But, perhaps the clearest testimony is that of Ghulam Mohammad Yatoo alias Gulla, [Testimony No.51] who when interviewed, was unequivocal that Choudhary was Lt. Colonel and below Colonel Vijay Kumar. Henceforth Choudhary is referred to as Lt. Colonel and Vijay Kumar as Colonel.

Hayat Khan and Lt. Colonel Choudhary / Colonel Vijay Kumar: The Beginning

While the section on Islamabad provides details on the beginning of Ikhwan and MM, the beginning of the MM's work for the army in Pattan Tehsil is testified to by two witnesses. The first is Noor-ud-din Mian, resident of Mian Mohalla, Pattan [Testimony no.3]. The second is Maqsood Ahmad Mian, resident of Mian Mohalla, Pattan [Testimony no.2]. Both are relatives of Hayat Khan. Noor-ud-din was Hayat Khan's uncle and Maqsood Ahmad Mian his cousin. Locally there is a perception that both Noor-ud-din and Maqsood were also involved in the support work for MM.

Noor-ud-din states that Hayat Khan worked for Lt. Colonel Choudhary at the Hyderbaig Camp. He states that in 1993, Hayat Khan, active with the MM [which by now had split from the HM] was arrested by army personnel from the Hyderbaig camp. He was detained for a short time. The witness visited Hayat Khan at the camp. He was not being tortured. During his detention, Hayat Khan met and interacted with Lt. Colonel

Choudhary. Hayat Khan was released *along with* his weapons. This was the first time that Noor-ud-din states that he suspected that Hayat Khan may have agreed to work with the army. Hayat Khan then began to connect other boys from the MM with the army. Lt. Colonel Choudhary [who Noor-ud-din states subsequently became a Brigadier at Bandipora] ran Hayat Khan. He visited the house of Hayat Khan maybe 40-50 times. This is the direct eye-witness testimony of Noor-ud-din. Noor-ud-din states that Hayat Khan used to get weapons directly from Lt. Colonel Choudhary from the Hyderbaig camp. Further, he states that 80 boys from Pattan were given army identity cards as they began working for the army. Today, he states that, out of 80, only 8-10 boys are alive.

Maqsood Ahmad Mian corroborates Noor-ud-din's statements. His assessment is that Hayat Khan began working for the army following his arrest. His release confirmed his association with the army. While Noor-ud-din states that Hayat Khan worked directly for Lt. Colonel Choudhary at the Hyderbaig camp, Maqsood Ahmad is less certain and states that he may have worked with the Palhallan army camp [but considering the time lines – and the death of Hayat Khan in 1994, Maqsood Ahmad seems mistaken as the Palhallan camp is said to have only come into existence at the end of 1994]. Maqsood Ahmad provides another anecdote that confirmed his belief that MM worked for the army. Azam Khan [originally a resident of Islamabad District] and working directly under Hayat Khan, was arrested along with a person named Dar from Naidkhali by the army. They were arrested with weapons in the possession. But, by the evening, they were released along with their weapons. This incident took place in 1994. Further, Maqsood Ahmad states that Hayat Khan used to walk around with his weapons, and since this sort of display was impossible without official connivance, the common understanding was that he did so with the sanction of the army.

Showkat Ahmad, alias Shoga, [Testimony No.6], confirms the connection of the MM with the army. His testimony, refers to incidents which took place while he was a part of MM for three months in 1994, relates to the area in Nihalpora and Chaksari. The MM group that he was a part of ran parallel to the Pattan and Palhallan group under Hayat Khan and other commanders. They reported to the Chaksari camp and the Major there. He does not remember the name of the Major at the camp but corroborates to some extent other testimony, by recalling that the Commanding Officer at Hyderbaig was called Choudhary. While he did not himself visit the Hyderbaig camp, as per his testimony, his commander did. He states that his commander was a person codenamed "Athar". He provides two examples from his early days with MM, which underlined their connection with the army. Two days into his association with MM, his group headed by Athar spotted the army. Showkat Ahmad wanted to attack them but Athar told him not to and that they would not be harmed. A similar incident took place subsequently as well where Showkat Ahmad remembers warning the group of army presence in their path. Once again Athar reassured him and the group that the army would not harm them.

Numerous witnesses – in detailed testimony or in passing conversation – asserted that Athar was a

commander of the MM and subsequently worked for the army. Nazir Ahmad, [Testimony no.52], states that it was in fact Athar who was the first and main Commander of MM in the area. It is only subsequently that Hayat Khan controlled Pattan area whereas Athar took care of Chaksari. But, witnesses state that Athar was not out in the “open” and would ensure that his links with the army were not widely known. The researchers of this report met with Athar – whose real name is Abdul Hamid Malik, resident of Chaksari, Pattan. He denied all allegations against him. He identifies himself as a victim – subject to an attack by unidentified gunmen. Further, while he accepted that he was part of the MM, he denied being a commander, having any sort of control over the operatives in MM – whether from Chaksari or otherwise, and most importantly he stated that the MM did not have a connection with the army. But, he also stated that there was a “personal” connection between certain members of MM – which was anyway split into various groups – Islamabad, Pattan/Palhallan/Chaksari etc – and the army. He did not elaborate. One instance of violence faced by him though is telling. He states that he was once arrested by Ikhwan. Most importantly, he was released following protests before the Chaksari camp and Colonel Vijay Kumar “scolded” the Ikhwan and ensured his release. Whether on a personal level or otherwise, this example strongly suggests that the army did have control over the Ikhwan [or MM for that matter]. Further, Athar also refers to the Behrampora killings where he states that in crossfiring between MM and HM militants some civilians – members of one family in whose house the HM militants were hiding according to Athar – were killed. Interestingly, when talking to the researchers, Athar stated that he was part of an internal investigation carried out by MM into this incident where he states that weapons of the MM were taken away by the HM militants. The investigations concluded that the family – whose members were killed – would have to pay money as compensation for the lost weapons. The researchers suggested to Athar that his position in this investigation clearly suggests his importance in the MM itself. Athar denied this suggestion as well. The detailed testimony on the Behrampora killings by the victim family is included as Testimony no.57. It may be stated that another possibility put forward by some voices was that Athar was being pressurized by the army to work for them and he therefore sought to balance his actions and kept good relations with both the army and militants. Abdul Jabbar Bhat of Chaksari was clear that Athar did not work for the army but that he was vulnerable. Most damning for Athar is perhaps the testimony of two senior leaders of the Muslim Conference (a constituent of the Pro Freedom Alliance All Parties Hurriyat Conference): Professor Abdul Gani Bhat and Ghulam Nabi Sumji. In testimonies annexed to this chapter as Annexure 1, both confirm that Athar was a gun-carrying member of the MM and Sumji states that he was in fact the Commander of North Zone of Kashmir and was senior to Hayat Khan. Witness C [Testimony No. 10] also confirmed the association of the MM with the army, and he offered an instance of actions to which he was eye-witness. He states that he was once in Pattan when he saw a fully armed member of MM, Mohammad Akbar resident of Vailoo, demanding money from a shopkeeper, all the while standing right next to an army personnel. The name of the shopkeeper was Hafizullah Bhat, and he ran

a medical store. Witness C also emphasizes the role of Colonel Vijay Kumar in the running of the MM. He does so with another illustration. He states that on one occasion MM picked up a HM militant and disappeared him. His name was Abdul Majid Wani. Abdul Majid Wani's brothers, approached Colonel Vijay Kumar. They said that they wanted the body. If not, they too would join militancy. Colonel Vijay Kumar, ensured that the body was found.

Witness D, [Testimony no.11], confirms the association of MM with the army. He was a part of the Chaksari group of the MM. He states that the MM had different “beats” – Pattan and Chaksari was separate and the latter was headed by Athar. He says that the army never harmed them and that is how he realized that the MM was with the army. Even in crackdowns, either the army would give them advance notice, or they would not be harmed. In fact, on one occasion, they were taken to the Chaksari camp and the army Major asked all the army men present to remember the faces of the MM boys and not harm them. The witness also states that on one occasion Major Pandey told him and other MM boys to be discreet as the connection between the army and them should not be apparent. The witness states that Haji Ghulam Ahmad Malik was known in the area to assist releasing boys from the army as he had connections with them. If the MM boys were mistakenly arrested he would ensure their release. The same was the case with a person called Ghulam Nabi Rather alias Gulzar from Chaksari who also had links with the army and would assist the MM boys. The witness states that on one occasion in 1992 he was arrested by the army along with another boy and fully armed, put in the Chaksari camp, but they were released by Gulzar along with their weapons. When he narrated this story to Athar, his commander just laughed. Athar knew then what was happening: the MM was with the army.

Structure, Weapons and Operations

An important aspect of control and command is the extent of control exercised by the Commanding Officers (Battalion level) over the Majors of individual camps. The question is then how much control did the Commanding Officer at the Tapper Camp [Hyderbaig camp] exercise over the Major of the Palhallan army camp? “Captain” Abdul Aziz Bhat [referred to as Captain as he used to work with the army] [Testimony No.5], states that the Commanding Officer knew everything that was happening in the camps. In fact, while the Major of a camp retained discretion in certain aspects and situations, sometimes even decisions to release a person would have to be sanctioned by the Commanding Officer. Captain Bhat narrates:

The Commanding Officer would know each and everything that was happening with the Major and his command. Every issue would be reported to the Commanding Officer. Sometimes the Major could release people directly but sometimes the Commanding Officer would have to intervene. On some issues the Commanding Officer would have to be consulted. But the Major is the one in charge of the camp.

This is perhaps best illustrated in his own case where he had to approach a Colonel, known to him, in the Hyderbaig camp, who in turn approached the concerned Commanding Officer – In Charge of Palhallan camp- who intervened and ensured the release of his two sons who

had been detained in Palhallan army camp. He also refers to the formation of a “Peace Committee” that functioned from 1994 to around 1998 under the Chairmanship of Abdul Khaliq Bhat, which was approved by the army and apparently formed in consultation with them. This committee was to intervene and assist in release of civilians picked up by the army. The creation of this body indicates the extent to which normal systems of power – the police being the most obvious in addition to the administrative systems – had been superseded. The army was the primary authority and civilians, under guidance from army officers, had to find ways and means to assist themselves.

Witness B [Testimony No.4] states that in the time that he was functional as an MM operative, and immediately prior, the government militia commanders, working for the Indian army, were: Mohammad Ramzan Mian, alias Hayat Khan, resident of Pattan, Azam Khan, resident of Hokar, Badasgam, Achabal, Islamabad District, Shaheen, resident of Nihalpora, Pattan, and finally, Ghulam Ahmad Waza, alias Amma Waza, resident of Palhallan. Each of the commanders succeeded the predecessor once they were killed. Witness B joined the MM and began working for the army during the tenure of Azam Khan.

The most precise and clear testimony of the arming of the government gunmen is that of Witness B. He states that weapons and ammunition were provided to them directly by the army. The weapons were provided by the Palhallan camp. A Company Havaldar Major [CHM] was in charge of maintaining a register. All weapons provided, and there was no quota or limitation, were to be accounted for in the register. All weapons and ammunition returned were also accounted for similarly. The witness himself never approached or went to the Hyderbaig camp. However, he states that commanders and senior gunmen did go to the Hyderbaig camp. Only they could deal with the senior officers at the Hyderbaig camp, such as Lt. Colonel Choudhary. Further, as stated above, Noor-ud-din confirms that Hayat Khan would receive weapons and ammunition directly from the Hyderbaig camp. Witness C states that the army used to supply the MM weapons even in Chaksari. He states that even Mohammad Yousuf Dar, brother of Ahsan Dar, was being armed by the army openly. The testimony of Witness D varies from Witness C to the extent that he states, only ammunition was received from the army and the weapons with the MM were those that they received earlier when they were militants. He states that ammunition was received from the Chaksari camp [as he was part of the Chaksari MM]. He states that Commander Athar would get the ammunition and then distribute it. He himself never met the Major and received the ammunition. Ghulam Hassan Bhat, alias Hass Kaloo, resident of Buran, Pattan, Testimony no.12, and working for Hayat Khan also confirms that ammunition was received from the army. Once again, he states he never received it directly from the army camp. He also suggests an understanding between the various MM groups as he states that when Hayat Khan's group did not have ammunition they could sometimes also get it from Athar's group of MM at Chaksari.

Both Witness B and Noor-ud-Din state that the regular Jammu and Kashmir police could not, and did not, interfere with the government gunmen and their operations. This extended all the way to the

Superintendent of Police [SP] level. Witness B goes as far as to state that they would not even listen to the police. But, the SOG, as evidenced by the role of DSP Kuldeep and ASI Surjeet, did run the government gunmen as well and were responsible for widespread human rights violations.

The role—rather the lack of a role—of the police has also been mentioned by Dr. Abdul Ahad Yatoo, resident of Hyderbaig, Pattan. Abdul Ahad Yatoo refers to himself as a social worker, and has fought elections, as detailed in his testimony [Testimony no.9]. As a person involved in the electoral process this witness would necessarily have an intimate understanding of the power, influence and control of the army in Palhallan. Abdul Ahad Yatoo stated that he had assisted in saving thousands of civilians detained by the army. While this claim and the surrounding circumstances are contested, there is little disagreement about the access Abdul Ahad Yatoo had to the army. Therefore, his testimony is compelling. He states that the Jammu and Kashmir police had no power to supersede the decisions of the army. They could “request” the army – for example to release a person detained – but the power lay with the army.

“Captain” Abdul Aziz Bhat [Testimony No.5], states that the army, because of the circumstances, was in control till the late 1990s and it was only subsequent to that that the police was given a role. The Superintendents of Police did not have a role and they were limited to their offices. This is also the reason why when his sons were abducted in December 1996 by the soldiers of Palhallan army camp, he chose not to approach a senior police official, Satnam Singh, who was his friend. Instead, he approached the army directly.

Witness D [Testimony no.11], also states very clearly that the police had no role and could not control the MM. Further, he states that even the SOG did not follow orders from the regular police at the Pattan police station. This lack of power of the policemen stationed at Pattan is also confirmed by Witness B. Ghulam Hassan Bhat, alias Hass Kaloo, who states that, based on his numerous visits to the Palhallan army camp he believes that the army was supreme and the police subordinate to them.

The above testimony of Abdul Ahad Yatoo of the power of the army is further buttressed by a claim that he makes that requires corroboration. But even uncorroborated it still is telling about the control exercised by army officers. He states that in 1994 or 1995 he approached the Commanding Officer – who commanded the Gharwal Rifles – and requested him not to allow the “ikhwan” [a reference to government gunmen] to function in the Pattan area as the town was peaceful. He states that the Commanding Officer accepted his request and the Ikhwan was in fact denied access to Pattan town.

Another illustration that displays the control the army held over the government gunmen is available in the testimony of Assadullah Ganie [Testimony no.21] where he states that the government gunmen who kidnapped his daughter ultimately surrendered before Major S.K. Sharma, at Hyderbaig camp at Zorawar cinema, despite the presence of police and other authorities to whom they might have earlier surrendered.

Joint Operations

The clearest evidence of the structure of violence in Pattan emanates from the witness testimony of raids,

crackdowns, intimidation and violence. Across the cases the army personnel and their officers lead the police and government gunmen as they commit crimes of extra-judicial executions, torture, enforced disappearances and sexual violence. Whether it was the Gharwal Rifles, the Mahar regiment or the Rajputana Rifles, and whether it was Major Sinha or Major Kambli, the army stationed at Palhallan was at the forefront, and clearly in control of, civilian agents of violence. Therefore, even in the raids conducted by army officers, government gunmen were included. Witness B's testimony is particularly strong with regard to receiving a direct order from Major Sinha to kill a HM militant [a command which he managed to avoid].

Also on record is the testimony of Showkat Ahmad alias Shoga [Testimony no.6] where on two occasions he was arrested due to information provided by government gunmen. In the first case, he was arrested after a falling out with his commander – Athar. He states that after a confrontation, his commander stayed in the Chaksari camp and arranged for his and another person's arrest and detention. On the second instance, a government gunman named Rashid himself comes to Showkat's house [on the information of a neighbor], brought him out and got him arrested by the army.

The different forces operating over Pattan are brought out by the testimony of Reyaz Ahmad Farhat [Testimony no.23] where he states :

My father was an active member of Jamaat-e-Islami. Like many other activists of Jamaat, my father was also arrested many times by State forces.

My father was first arrested in 1987 by the police from his house and jailed in Hira Nagar Jail, Jammu for two years. After his release, he was again arrested on 26 July 1989 by BSF from Wusan market. He was taken to Old Airport, Rangreth, a detention center, where he was kept for two months and later shifted to Hari Niwas, a notorious torture center. In Hari Niwas he was detained for three months during which he was tortured. Then he was shifted to Kot Bhalwal Jail, Jammu and detained there for one and a half year.

In 1994, for the first time, a military camp comprising Garhwal Rifles was established in the Palhallan area. As soon as the camp was established the soldiers began raids at our house twice a day. The daily raids forced my father and Mohammad Maqbool, another Jamaat activist living in same area, to migrate to Srinagar. My father started living with his relatives at Bemina while Mohammad Maqbool stayed at Hawal in downtown Srinagar. However, there was no let up in the raids. Along with Garhwal Rifles, the raids were conducted by government gunmen particularly Mohammad Shaban Kawa, Ghulam Nabi Kawa, Ismail Kawa, Aziz Rather, his son Bashir Rather, Ghulam Ahmad Waza, Mohammad Abdullah Itoo, Habibullah Mir and his son Latief Ahmad Mir, Ghulam Nabi Kochka, Jabbar Kanna, two gunmen with same name Abdul Rashid Ganie, Bashir Ahmad Gania, all of whom were residents of Palhallan and were working with the Garhwal regiment.

On 29 November 1995, Major Kambli of Garhwal Rifles along with his soldiers and government gunmen Ghulam Ahmad Waza, Shaban Kawa and Shahnawaz and others with masked faces raided the house of my father at Bemina. He was taken out in the lawn and army fired

few aerial shots. Then my father was taken to the Palhallan army camp. In the camp he was tortured. Ghulam Nabi Kawa hit his Kangri (firepot) on my father's head. The Commanding Officer and Major Kambli pressurized him to defame the Jamaat publicly. He was told if he did that he would be rewarded with money and be appointed as a government gunmen commander. However, he refused to act on army diktats. Next day, his dead body was handed over to Parimpora police station by army. Having no information of my father's whereabouts, my mother, Shahmala, along with another Jamaat member Abdul Majeed of Rafiabab reached the police station to file a missing report. When my mother was giving the details of my father to the police, they shocked her with news that they had already received the dead body of my father from government gunmen. Then my father's dead body was transported in a police jeep to Palhallan for last rites.

After the killing of my father, the army led by Major Kambli still raided my house, and now he was looking for my uncle, Mohammad Maqbool Hajam who was an active member of HM. Meanwhile, a crackdown was imposed in the area and all the inhabitants of the village were assembled at Sadderbal School, Sofi Mohalla. I was taken to the place where Major Kambli was during the crack down. Major Kambli asked me about my uncle Mohammad Maqbool Hajam's whereabouts. I said I did not know. Major Kambli poured hot tea on my head. This happened in the presence of 200-300 people. Then I was taken to one of the rooms of the school, stripped naked and beaten. Major Kambli gave me a grace period of ten days to produce my uncle. On the 10th day, I left my house and shifted to Baramulla, and returned after two months, when I heard that Major Kambli had been transferred out from the camp.

In September 1996, Mohammad Maqbool, my uncle, and his other friend Abdul Rasheed Bhat were arrested during a meeting of HM. The place where the meeting was held was cordoned by the Mahar Regiment and government gunmen identified as Lateef Ahmad Mir, Abdul Rasheed Ganai, Abdullah Yatoo and Sahba Ganai. The meeting was held in the shop of Abdul Ahad, resident of Raipur, Palhallan. Other members of HM were also supposed to come for the meeting to the same place. Army and Ikhwanis raided the shop in which Mohammad Maqbool and Abdul Rasheed Bhat were arrested and brought to Palhallan and kept there in the army camp. Both were tortured there and on the 29th day in the camp they were killed during the torture and their dead bodies were found at Ghat Palhallan. The family received the dead body from the Pattan Police Station. Mohammad Maqbool's dead body was also not allowed by government gunmen to be buried at the Martyr's graveyard. He too was buried then at his ancestral graveyard.

In 1997, Major Sinha raided my house and picked me along with my two brothers and cousin brother. We were all tortured together at Palhallan army camp. After two days one brother was released, and on the fifth day I was also released. Next day, Kamal Bhat a source for the Palhallan army camp along with Numberdar came to our house. They told my family and me that the other brother and cousin would be released only if the demand of Major Sinha was accepted: payment of Rs. 5,00,000. The family arranged Rs. 1,50,000 and a carpet worth Rs.

50,000. This was sent to Major Sinha through Kamal Bhat and then brother and cousin were released.

In 2004, at 4:00 pm a few Jammu and Kashmir police personnel came to my house and I was summoned to appear in the Pattan Camp. I went there at 5:00 pm. At the camp, DSP Mohan Lal accused me of providing shelter to militants, being affiliated to Jamaat and then lodged a FIR against me and took me to the Matches Factory camp at Baramulla. There I was kept for 29 days in a cell, which was so confined that I was unable to sit or stand properly. I was also tortured there and was made to sit on an iron chair through which I was electrocuted. I was hung upside down and my head was dipped in water. I was tortured for four to five days. After 29 days I was shifted to Hariniwas Interrogation Centre, Srinagar and was kept there for eleven days. There too I was beaten by sticks and was asked about militant whereabouts. After this, I was shifted to Pattan police station and was kept there for five to eight days and then I was released on bail. After my release the army still continued to raid my house and summon me to Wusan and Hyderbaig camps till 2007.

In 2007, the SOG, Baba Taing, Pattan camp raided my house and arrested me. Mohammad Yousuf Bandh, the then DSP was himself with his personnel while raiding my house and. They took me to the Cargo camp at Srinagar. There I was hung upside down, my body was electrocuted, my legs stretched and my body was dipped in water. I was released after twelve days. My family was informed to take me home.

In 2009, I was going to Srinagar and was arrested at Singhpura. I was going to Srinagar in a Sumo vehicle, which was stopped by SOG and I was taken to Rambagh, Srinagar for enquiry by Special Investigation Team [SIT] and IB and was kept there for one day. In the evening I was shifted to Shergarhi police station. One more boy, Mudasir Malla, a friend of mine was also arrested on the same day. Police filed a wrong FIR against me that I had weapons on me and was arrested at Wathoor, Budgam. After four months in Shergarhi police station I got bail.

Repeated Victimization

As seen in the case study of Islamabad, in Pattan too there are individuals who were repeatedly and systematically targeted for their political beliefs or family relationship with militants. This is most starkly brought out in the testimony of Mohammad Ashraf Khan, whose father was a militant:

The army started harassing my father as soon as the Palhallan army camp was set up in 1994. The Garhwal Regiment was stationed there. Due to this camp being set up, he migrated to another village Ghat Gopalan where he stayed along with his outfit.

Aziz Garhwal, of the Garhwal regiment, along with 15-20 persons, would come home at night and beat me, as well as my mother. They would come at around 10:00-11:00 pm. They would also come during the day or in the evening. I was beaten up despite the fact that I was physically handicapped with a damaged leg. I was 9 years old at that time. Five to seven government gunmen would also accompany the army during these raids. They included Ghulam Ahmad Waza, Ismail Kawa, Ghulam Nabi, Shaban Kawa, and Abdul Rasheed. Apart from beating me and my mother, they would also break things inside the house. The army would come and raid

the house daily or sometimes even two times a day.

Major Kambli [alias Dhandan "Toothy" Major] would come for raids even when the family was staying at my father's mother-in-law's house. He would keep his shoes on top of my feet and my mother's feet and crush them by pressing down hard.

On 8 November 1995, there was cross firing in Ghat Gopalan village and during the incident my father was killed. His dead body was kept in the Palhallan army camp. Government gunmen there stole his watch, jackets, boots etc. But Major Kambli said that they must respect the deceased. He said that Ghulam Ahmad Khan was only doing for his outfit what he [Major] was doing for his regiment. They then returned the body to us.

However, raids at our home continued even after the encounter. In 1996, Major Liyakat [Sinha] was posted to the Palhallan army camp and he continued to raid our home. Government gunmen would inform him that our family still had links with HM. He came home and took away valuable carpets that we owned. He would cut up the carpets and carry them away with him. He took the granite tombstone which the family had made for our father.

In 1996, the government gunmen told Major Liyakat that Ghulam Hassan Khan, my cousin was now with HM. So, the army from Hyderbaig took me into custody for 15-20 days. My family found out because when they went to Palhallan army camp, they were told that I had not been taken and were asked to try Hyderbaig. Major Liyakat had taken me to Hyderbaig. Through the intervention of a relative they secured my release but I was in a half-dead state. They had used an iron roller all over my body. They had burnt me with cigarette butts. They had also given me electric shocks all over my body. Major Liyakat continued to raid our house even when Ghulam Hasan was in custody.

My maternal uncle, Mohammed Maqbool Tantray, was killed on 5 May 1996. Government gunmen claimed that he had links with my father and therefore with HM. They would regularly come to his house for raid and seize items. They would also try to keep the family under pressure by letting them know that they were under surveillance. Abdul Rasheed Ganai came home that day [I was present and witness to the incident; I was 11 years old then] and shot Mohammed Maqbool Tantray in the head, as soon as he opened the window to try and get away.

My cousin, Bashir Ahmed Khan, was also tortured and killed. Government gunmen took him almost daily to the Palhallan army camp. They came home one day in 1996 and shot Bashir Ahmed Khan in his stomach. Abdullah Hadd, resident of Yatipora killed him. They claimed that he too had had links with HM.

Reprisals/ Human Shields

The attack on families of militants is a feature already seen in the Islamabad study. But, in the case of Pattan [particularly Palhallan army camp] this "attack" took on a unique form where families of militants were made to sleep in the houses and sheds in the camp as hostages. Fayaz Ahmad Tantray, son of Abdul Hamid Tantray, resident of Tantraypora, Palhallan testifies to this, as does Mohammad Akbar Bhat whose house was occupied by the SOG. This practice is also confirmed by Witness B [Testimony no.4] when he states that this was

done as protection for the forces – as the families were used as human shields. He further states that as they were with the army they also served as effective hostages that might deter militants from attacking the forces.

The following persons were made to sleep at the camp according to interviews in the area: Mohamamd Shahbaz Khan and Zahoor Ahmad Khan, sons of Wali Mohammad Khan, Abdul Rashid Sheikh, son of Ali Mohammad Sheikh, Abdul Rashid Bhat, son of Abdul Aziz Bhat, Abdul Ahad Bhat, son of Ali Mohammad Bhat, Farooq Ahmad Sheikh, son of Ghulam Mohiuddin Sheikh, Gulzar Ahmad Bhat and Ghulam Hassan Bhat, sons of Ghulam Mohammad Bhat, Ghulam Ahmad Malik, Ghulam Mohiuddin Sheikh, son of Abdul Khaliq Sheikh, Mohammad Akbar Najar, son of Abdul Habib Najar, Ghulam Mohammad Najar, son of Habibullah Najar, Javed Ahmad Najar, son of Ghulam Ahmad Najar, Reyaz Ahmad Tantray, son of Ghulam Qadir Tantray, Ghulam Mohammad Tantray and Ghulam Mohiuddin Tantray, sons of Abdul Kabir Tantray, Fayaz Ahmad Tantray, son of Abdul Hamid Tantray, Mohammad Maqbool Tantray, a teacher, and Ghulam Mohiuddin Sheikh, son of Ghulam Rasool Sheikh.

This collective punishment was meted out for a few years.

Fayaz Ahmad Tantray, victimized in this manner, testifies to his experiences of violence in the following words:

In 1990, my brother Rafiq Ahmad Tantray went across the line to join militancy. Since then the army started harassing my family including me. The army of the Hamray camp raided many times and enquired about my brother.

From 1995, I was forced to appear in camps like Palhallan, Wusan and SOG camp Baba Taing every Sunday. IB officers Bishnu Panday and Varghese also called me to the Hyderbaig camp. At the camp, I came to know about the name of these officers.

Since 1998, persons of the village whose family members were militants were forcibly kept in the camp for the night and made to sleep there. Then in the morning we were made to sweep the camp and only then were allowed to go. This continued till 2001.

In 2002, at about 9:30 am, I was at the shop of my maternal uncle Ghulam Mohammad Bhat. Meanwhile, two government gunmen, Mohammad Abdullah Yatoo and Reyaz Sadda passed through the same road where the shop was situated. This was close to the army camp at Palhallan in the Pandit houses. Between these two gunmen, Mohammad Abdullah, was shot on his head. Nobody could find out where the bullet was fired from. Then the army also opened fire in the air. My uncle and I ran away from the spot and hid ourselves at Kumar Mohalla. The army raided the place my uncle and I were hiding. We were arrested and brought to the spot of incident again. There, DSP (Operations) Rashid Billa grabbed me by the ear and questioned me. We were both then taken to the Palhallan army camp and kept there for five to six days and only then released.

On the same night of my release at about 11:30 pm, the SOG of Baramulla raided my house. I was taken to G-Branch, Matches factory, Baramulla. For the first one to two days I was not tortured. After two days I was tied to a chair and was beaten with sticks. SP (Operations) Mushtaq Sadiq beat me himself. After being beaten I was given electric shocks. Also when I was going to the

bathroom SOG personnel beat me till I reached the bathroom. I was released after 16 days of torture. Then I was brought to Pattan police station for five to six days and was only then released.

On the same day of my release, SP Mushtaq Sadiq was going on a raid to Shalpora, Palhallan. When he reached Palhallan he sent the watchman of the area to call me. The SP took me along for the raid. On returning from there the SP handed me to police Station Pattan and I was kept there for 2 days.

On 15 August 2002, I and other inhabitants of Palhallan were forced to hoist Indian Flags on our shops and houses by the army of Watargam. Major Rakesh was along with the army. Major noticed that the flag hoisted on the shop of my maternal uncle was upside down. He asked me who hoisted this flag and told me to bring the flag down. I tried to bring the flag down but couldn't reach the height of the flag. Major abused me verbally and ordered me to bring it down. I jumped and brought the flag down, but the flag fell down on the road from my hands. Then they beat me with sticks, Major Rakesh slapped me 10-15 times. I was trampled by army and was dragged on the road.

In 2003, I was going to my office in Sopore in a bus, but I noticed that a sumo vehicle was following me, as the sumo would stop where the bus stopped and was after the bus till Sopore. At Sopore when I stepped down from the bus, four boys came out of this sumo and asked me about Huda College. I told them it is in Pattan. All the four boys were non-Kashmiris; I could identify this by their language and looks. The boys took out a pistol and forced me to board into a sumo. They covered my eyes and after driving me for 2-3 hours, kept me in an empty water tank, which was in an army camp. I think that I was kept in Choora camp, as there is such a water tank in Choora Camp. The tank was almost 50 meters deep. I was lowered down into the tank by a ladder. On the first day in the tank I was made to drink chili powder water and was not allowed to sleep as a bright lamp was kept on in the tank, which was pointed towards my face. I was kept there for seven days and for these days I was not allowed to sleep. After this I was referred to Shariefabad camp for seven days. At both the places I was asked about my brother's whereabouts. On the 7th day at Shariefabad camp an army person told me that I would be killed on next day. I was told that my parents would receive a message the following day that their son has been killed while crossing the line (line of control). I do not know the name of the army person who said this to me. On the same night I was brought to Narbal with my eyes covered at about 12:30 am and was tied there with a tree. An army person told me there that he was going to shoot me right then and he also asked me where he should shoot me. I replied "on the heart". The army left and kept me there, but I was not aware about this as my eyes were blind-folded. After an hour, the then SHO Pattan Muneer was passing through the same road along with his personnel. He found me tied to the tree and took me to police post Mirgund. From there he took me to police station Pattan. He called my family. I was released on the next day.

After few days Major A.K Sharma of Wusan Camp along with his personnel visited my house. He told me that I had been picked up by RAW from Delhi. The Major also asked me if any of my belongings remained with the RAW personnel. I said my watch, mobile and 1300

rupees with the wallet. The Major told me that I would receive each thing back. After 10-15 days I received my things back from Wusan Camp. After 2003 I was not harassed anymore."

The Camp Record

In the case of Pattan and surrounding villages the heavy militarization – from MM, BSF, CRPF, Police and the presence of the army, including at Palhallan camp, Hamray camp and Tapper army camp – led to numerous killings and other violations.

While conducting field research in Pattan town, Palhallan village and adjoining areas the researchers came across the following cases of enforced disappearances, extra-judicial executions, and torture. These cases are not a comprehensive listing of the cases of violations in the area. These cases should be read along with the more detailed testimonies in **Annexure 3** and the detailed list of violations at **Annexure 4**.

Enforced Disappearances

The following persons have been subjected to enforced disappearance and the involvement of a unit/officer is as indicated below:

- Fayaz Ahmad Dar, son of Abdul Gani Dar, resident of Raipora, Palhallan, government school teacher, was abducted by government gunmen, specifically Azam Khan, and then disappeared from Pattan on 19 August 1994.
- Mohammad Akbar Rather, son of Mohammad Subhan Rather, resident of Palhallan, student, was abducted by Major Sinha, alias Liyaqat Ali Khan, on 28 November 1996, and then disappeared.
- Abdul Ahad Dar, son of Ghulam Ahmad Dar, resident of Wusan was a case of prolonged disappearance. Ghulam Ahmad Dar states that his son was arrested by a Major Samir Khan and then handed him over to Major Sinha alias Liyaqat Ali Khan, from the Palhallan army camp. Following a prolonged disappearance the body of the victim was found.
- Saleema Begum, aged 27, resident of Tantraypora, Palhallan, was disappeared by government gunmen on 12 August 1995.
- Fayaz Ahmad Lone, son of Abdul Gaffar Lone, resident of Hanjiwara Bala, Pattan, was disappeared by the army on 7 July 1994.
- Abdul Jabbar Wani, aged 35, Abdul Sidiq Wani, resident of Raipora, Palhallan, a government gunman, was disappeared by the army in 1998.

Killings

The following persons were killed and the involvement of a unit/officer is as indicated below:

- Mohammad Maqbool Malik, resident of Palhallan, Shopkeeper, was also an Imam at the Raipora masjid. The victim was killed on 14 April 1996 as he was leaving the masjid, by government gunmen and army personnel of the Palhallan army camp.
- Mohammad Ramzan Malik, son of Abdul Rehman Malik, resident of Raipora, Palhallan, Shopkeeper, was an ex-militant and Jamaat-e-Islami member and he had been jailed for two years in the past. On 9/10 October 1995 the victim was killed by

Major Kambli.

- Mohammad Maqbool Tantray, aged 18/20, Carpet weaver, was killed sometime after the disappearance of Mohammad Akbar Rather, in 1996. The victim was killed late at night, around 9:30 pm by government gunmen. Prior to going to his house, the gunmen went to the house of Ghulam Mohiuddin Sheikh, but no one was injured there. The victim's body was buried the morning after his killing.
- Bashir Ahmad Khan, was a civilian aged about 25 years. The government gunmen of the Palhallan army camp killed him inside his home in 1996.
- Abdul Rashid Hajam [Farhat], resident of Palhallan, was an active member of Jamaat-e-Islami. The victim was at that point staying in Srinagar. He was arrested at about 8:30 pm by army and government gunmen, led by Major Kambli and brought to Palhallan and killed on 29 November 1995.
- Ghulam Mohiuddin Sheikh, son of Ghulam Rasool Sheikh [Haji], resident of Tantraypora, Palhallan, and Nazir Ahmad Lone, son of Habibullah Lone, resident of Tantraypora, Palhallan were killed. Ghulam Mohiuddin Sheikh was first arrested in 1987 as he was a member of Jamaat-e-Islami. He was tortured on numerous occasions beginning from 1990. On 25 June 1999 he was killed along with a person named Nazir Ahmad Lone.
- Dilawar Khan, an ex-militant and government gunman, was killed by personnel of the Palhallan army camp in 2000. He was working with Nazir Ahmad Lone as an informer for the Delhi police.
- Mohammad Ramzan Lone, resident of Gosh Bugh, Teacher, was killed in 1996 by government gunmen along with personnel of Hyderbaig camp.
- Ghulam Mohammad Wani, resident of Lolipora was killed by government gunmen along with army personnel of Hyderbaig camp.
- Zahoor Ahmad Bhat, son of Noor-ud-Din Bhat, resident of Pattan town was killed by Sub Divisional Police Officer (SDPO) Abdul Rashid Khan alias Rashid Billa on 7 August 1998.
- Abdul Rashid Malla and Mohammad Maqbool Hajam, resident of Palhallan were abducted by the army, kept at the Palhallan army camp for 21 days and then killed on 24 August 1996 at Ghat Palhallan. Mohammad Maqbool Hajam is the brother of Abdul Rashid Hajam [Farhat] who was killed nine months before this killing.
- Tariq Ahmad Teeli, son of Sonaulah Teeli, resident of Pattan was killed in 1994 by government gunmen. He was a released HM militant.
- Ghulam Ahmad Yatoo, son of Abdul Rehman Yatoo, resident of Yatipora, Pattan, was killed by personnel of Wusan camp on 1 September 1995.
- Ghulam Mohammad Yatoo, son of Abdul Rehman Yatoo, resident of Yatipora, Pattan, was killed by personnel of Gharwal Rifles, Palhallan army camp on 22 May 1994.
- Reyaz Ahmad Dar, 14 years old, son of Ghulam Nabi Dar, resident of Bon Mohalla, Yatipora, Pattan, was killed by the personnel of Hyderbaig army camp after they asked him to find their missing dog.
- Ghulam Mohammad Ganai, Reyaz Ahmad Ganai, Irshad Ahmad Ganai, and Saleema of Behrampora, Pattan were killed in firing between MM

and HM and then subsequently were made to pay Rs. 1 lakh to MM on the insistence of Athar, MM commander as the MM claimed that their weapons were taken away by HM. This happened on 4 February 1995.

- Mohammad Afzal Khan, son of Yar Mohammad Khan, resident of Ganjipora, Pattan, casual labourer at PHE department. Hayat Khan, Azam Khan and other government gunmen made him work at Ganjipora and cut the willow and poplar trees of the migrant Kashmiri Pandits. They said that the money needed to be sent to the Pandits. Hayat Khan and his group was then attacked by HM. One of their operatives, code named Bahadur Khan [he had come from outside Pattan to work for MM], was killed. As a reaction they killed Mohamamd Afzal Khan after torturing him in the paddy fields. His body was found subsequently.
- Sonallah Lone, son of Ali Mohammad Lone, used to work with militants. After being chased by the army he was killed in mysterious circumstances.

Torture

The following persons were tortured and the involvement of a unit/officer is as indicated below:

- Manzoor Ahmad Naikoo, son of Abdul Aziz Naikoo, resident of Palhallan, Businessman, was tortured in 1996 by Major Sinha alias Liyaqat Ali Khan at the Palhallan army camp.
- Mohammad Ismail Sheikh, son of Ghulam Mohiuddin Sheikh, resident of Tantraypora, Palhallan was interrogated and tortured on six occasions by State forces.
- Abdul Ahad Bhat, resident of Tantarpora, Palhallan, was tortured at the Palhallan army camp by the SOG. He was electrocuted and acid was thrown on him.
- Abdul Rahim Reshi, son of Abdul Jabbar Reshi, resident of Palapora, Pattan, farmer, was accused of working with militants even though he was not a militant. He was part of Jamaat-e-Islami. He had been arrested and tortured numerous times by the Palhallan army camp.
- Mohammad Maqbool Reshi, son of Abdul Gani Reshi, resident of Palapora, Pattan was arrested in a crackdown by Garhwal Rifles from Palhallan army camp. He was burnt by a stove which was placed between his feet.
- Fayaz Ahmad Ganai, son of Ghulam Mohammad Ganai, aged 38 years, resident of Katpora, Palhallan, Baker was tortured by government gunmen and personnel of the Mahar Regiment from the Palhallan army camp in 1996.
- Abdul Ahad Dar, son of Mohammad Subhan Dar, was tortured by personnel of the Palhallan army camp.
- Ghulam Ahmad Najar, resident right next to the Palhallan army camp, was tortured by both Major Kambli and Major Sinha alias Liyaqat Ali Khan. He was made to stay at the camp as well. His son was a militant.
- Abdul Salam Najar, uncle of Ghulam Ahmad Najar, resident right next to the Palhallan army camp, was tortured and burnt with cigarette butts. Further, he was asked to pay Rs. 20,000 to be allowed to

leave.

- Mushtaq Ahmad Bhat and Hilal alias Urfi, sons of Abdul Aziz Bhat, resident of Bhat Mohalla, Pattan were tortured in and around December 1996 by Major Sinha alias Liyaqat Ali Khan at the Palhallan army camp.
- Mehraj-ud-din Bhat, son of Abdul Rashid Bhat, Resident of Marazi Mohalla, Tantraypora, Palhallan, was tortured by personnel of the Palhallan army camp, particularly the SOG on numerous occasions and once severely in 1994.
- Fayaz Ahmad Tantray, son of Abdul Hamid Tantray, resident of Tantraypora, Palhallan, was made to sleep in the SOG camp, part of the Palhallan army camp, for a few years from 1998 onwards. This was because his brother was a militant and this was the routine the army implemented on family members of militants i.e. making them sleep at the camp. The victim was also tortured. During the time of 3 Gurkha Regiment, the victim was once beaten by Major Rakesh for mistakably dropping the Indian flag on the ground at his uncle's shop.
- Mohammad Yousuf Bhat and Fayaz Ahmad Bhat, sons of Ghulam Mohammad Bhat, residents of Tantraypora, Palhallan, were tortured by Major Sinha alias Liyaqat Ali Khan in 1996.
- Ali Mohammad Bhat, son of Ghulam Qadir Bhat, resident of Raipora, Palhallan, Retired teacher. The victim was a member of Jamaat-e-Islami and was tortured in 1999 by the army and SOG of the Palhallan army camp.
- Reyaz Ahmad Hajam, son of Abdul Rashid Hajam [Farhat], resident of Palhallan, was tortured in 1996 by Major Kambli of Palhallan army camp. Further, his two brothers, and cousin brother were tortured together in 1997 by Major Sinha alias Liyaqat Ali Khan.
- Abdul Aziz Bhat [Haji], son of Mohammad Subhan Bhat was tortured by Subedar Thapa of Garhwal Rifles. Subsequently he was killed by unknown gunmen.
- Ghulam Mohammad Bhat, son of Mohammad Subhan Bhat, resident of Bhat Mohalla, Palhallan, was tortured by Garhwal Rifles.
- Mohiuddin Tantray was the elder brother of Shabir Ahmad Tantray, who was a militant and known as Yaseen Charlie. The victim was tortured by Mahar Regiment personnel with his hands tied behind his back and polythene was burnt onto his back.

Encounters

As in the case of Islamabad, the 'encounter' was a feature of violence in Pattan as well, including by the Tapper and Palhallan army camps. In the case of Pattan, information was provided by Jammu and Kashmir Police through RTI regarding encounters in Jammu and Kashmir from 1990 till 2014.

The information summarized below proves that besides the army, various battalions of CRPF, BSF and SOG of the Jammu and Kashmir Police have been intensively involved in the counter-insurgency operations.

In the area of study there are numerous allegations against the forces including allegations of staged encounters. The RTI information on encounters provides an opportunity and a line of enquiry for

investigation as it is possible to now connect a specific force to a specific encounter and determine whether it was a staged encounter or not.

There is no independent mechanism to ascertain the presence of various armed forces units who have been deployed in this region over the last 25 years. But, the RTI information from the police appears to provide some official confirmation about the presence of various armed forces at a particular time in a specific location.

The data shows that the number of encounters was very high from 1990 to 1995. There was a significant drop in the number of encounters from 1996 to 1998. The number of encounters picked up again between 1999 to 2002. From 2003, the number of encounters has declined once again.

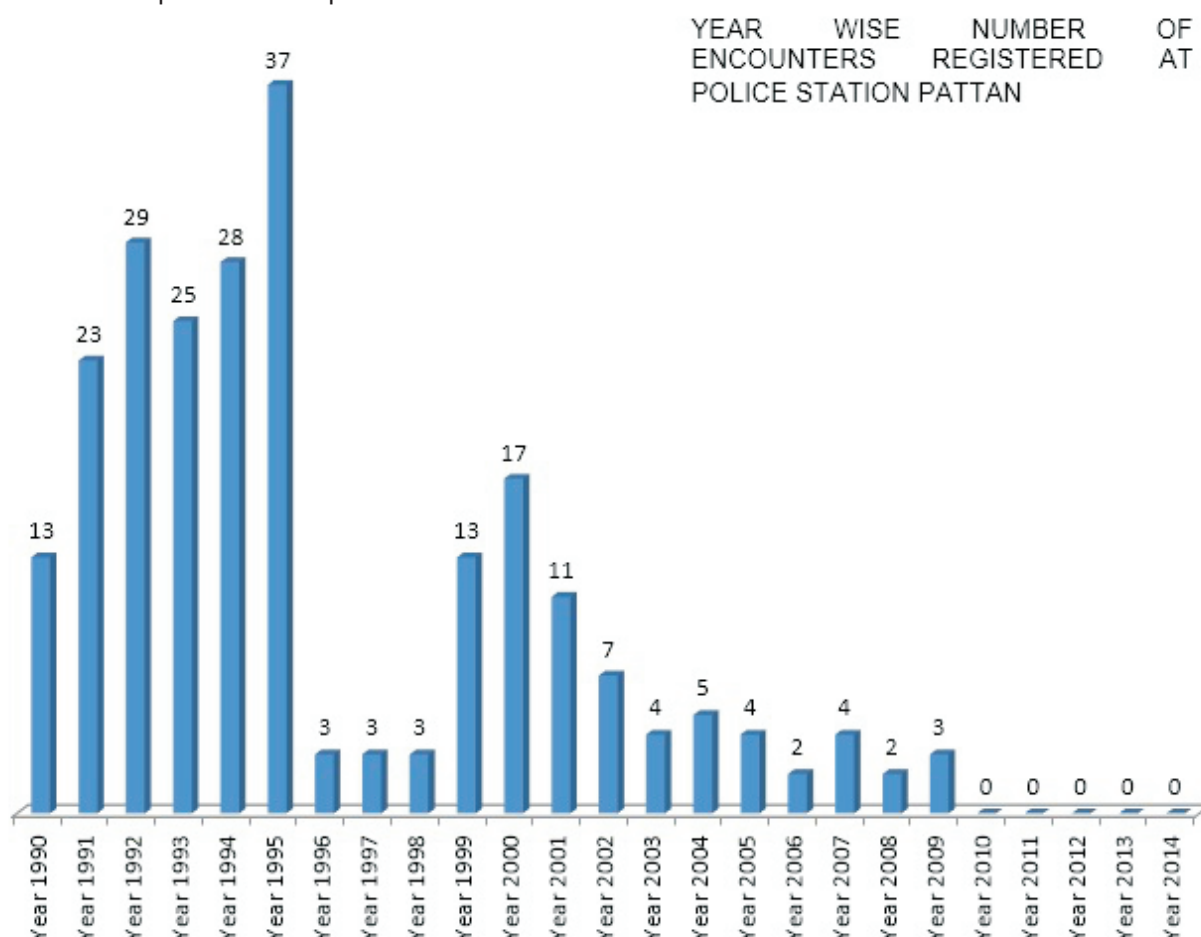
The total number of encounters from 1990 to 2014 is 238. According to the police admission 27 civilians have been killed. Based on other information available, no one has investigated the culpability of the armed forces or indeed prosecuted individuals or units for these crimes of admitted civilian killings.

Significantly, in these 238 encounters police claim that 225 militants were killed. Out of this, 45 continue to be unidentified. In cases researched in this report there are examples where civilians were killed by the army in fake encounters and then shown to be militants. For example, Testimony no.49 provides information on two cases of fake encounter in Yatipora, Pattan. Both are brothers of the witness Ali Mohammad Yatoo. First, his brother Ghulam Ahmad Yatoo was killed on 1 September 1995 and a FIR was filed by the 15 RR of Hamray camp stating that the victim was a militant, who died in firing and recovery of weapons and ammunition were made. This is the same year in which as per the RTI response above

15 RR of Hamray was involved in 11 encounters. Presumably this “encounter” was one of them. The family of the victim state that he was interrogated and then killed. Most interestingly, the family received ex-gratia relief and SRO-43 benefits from the government thereby proving that even as per government inquiries he was not involved in militancy related activities. But, the FIR filed by Major Jagjit of 15 RR never led to any prosecution for the fake encounter. The second case is of 22 May 1994, a year earlier, is similar. This time Ghulam Mohammad was taken away by the Gharwal Rifles of the army on 22 May 1994, killed, and categorized as a militant. The family states that he was used as a human shield and killed. Once again, in that year Gharwal Rifles was involved in 7 encounters and this fake encounter is presumably one of them. The family received ex-gratia relief and SRO-43 benefits thereby once again proving that the government itself did not consider the victim to have been involved in militancy related activities.

Most importantly, the question of 45 unidentified militants reveals that the phenomenon of unmarked graves and unidentified bodies is prevalent in the Pattan area. There are documented cases, including by the Jammu and Kashmir State Human Rights Commission, where bodies have been buried as unidentified militants by the forces that later were found to be in fact civilians. Investigations would need to be carried out on these 45 unidentified “militants” to ascertain their identity, which in turn could lead to investigations on the commission of serious crimes.

The summarized information relating to encounters in Pattan is presented as a graph and table below:



Year	NUMBER OF ENCOUNTERS REGISTERED IN PATTAN POLICE STATION	AGENCIES INVOLVED IN ENCOUNTERS
Year 1990	13	125 INF BN TA (1 encounter) BSF (1 encounter) CRPF (1 encounter) CRPF 45 BN (2 encounters) CRPF 46 BN (1 encounter) CRPF 48 BN (3 encounters) CRPF 50 BN (2 encounters) CRPF 64 BN (1 encounter) JAT REGIMENT (1 encounter)
Year 1991	23	ARMY (7 encounters) ARMY 12 DOGRA REJ (1 encounter) ARMY 2ND JAT REGIMENT (1 encounter) CRPF 46 BN (2 encounters) CRPF 47 BN (2 encounters) CRPF 48 BN (2 encounters) CRPF 50 BN (5 encounters) DOGRA REGIMENT (1 encounter) GRANADIERS (1 encounters) JAMMU AND KASHMIR POLICE (1 encounter)
Year 1992	29	ARMY (1 encounter) ARMY / POLICE (1 encounter) ARMY 05 GUARDS (7 encounters) ARMY 15 RAJ RIF (1 encounter) ARMY 15 RAJPUT (1 encounter) ARMY 158 M C/O 56 APO (1 encounter) ARMY 27 RAJPUT (3 encounters) ARMY 514 GRD (1 encounter) ARMY 7 DOGRA (2 encounters) BSF 122 BN (1 encounter) BSF 16TH BN F COY (1 encounter) BSF 24TH BN (1 encounter) CRPF (1 encounter) CRPF 47 BN (6 encounters) JAMMU AND KASHMIR POLICE (1 encounter)
Year 1993	25	ARMY (2 encounters) ARMY 10 BIHAR (5 encounters) ARMY 22 GRD (1 encounter) ARMY 27 RAJPUT (8 encounters) ARMY 7 DOGRA (4 encounters) ARMY 9 PARA (1 encounter) BSF 122 BN (1 encounter) BSF 172 BN (1 encounter) CRPF 47 BN (1 encounter) JAMMU AND KASHMIR POLICE (1 encounter)

Year 1994	28	ARMY (1 encounter) ARMY 05 GUARDS (1 encounter) ARMY 10 BIHAR (1 encounter) ARMY 16 BIHAR, ARMY 2ND GADWAL (1 encounter) ARMY 192 HEAD QUARTERS (1 encounter) ARMY 26 PANJAB (2 encounters) ARMY 27 RAJPUT (4 encounters) ARMY 2ND GADWAL (6 encounters) ARMY 2ND GRD (2 encounters) ARMY 5 GUARDS (1 encounter) ARMY 7 DOGRA (4 encounters) BSF 03 BN (1 encounter) BSF 122 BN (1 encounter) BSF 13 BN (1 encounter) BSF 43 BN (1 encounter)
Year 1995	37	ARMY (2 encounters) ARMY 13 GUARDS (2 encounters) ARMY 15 RR (11 encounters) ARMY 26 PUNJAB (2 encounters) ARMY 2ND GADWAL (16 encounters) ARMY 34 RR (1 encounter) ARMY 7 DOGRA (1 encounter) ARMY CAMP KREERI (1 encounter) BSF 13 BN (1 encounter)
Year 1996	3	ARMY (1 encounter) ARMY 15 RR (1 encounter) ARMY 8 FIELD REGIMENT (1 encounter)
Year 1997	3	ARMY 3 GRD (1 encounter) ARMY 8 RAJ RIF (2 encounters)
Year 1998	3	ARMY (1 encounter) BSF 95 BN (1 encounter) SOG CRPF BSF (1 encounter)
Year 1999	13	ARMY (2 encounters) ARMY 2 RR (1 encounter) ARMY 3 FIELD REGIMENT (1 encounter) BSF 194 BN (2 encounters) BSF 30TH BN (1 encounter) BSF 95 BN CRPF, 10TH BN SOG PATTAN, E.L INFANTRY (1 encounter) SOG BUDGAM (1 encounter) SOG PATTAN (2 encounters) SOG PATTAN, CRPF 10TH BN (1 encounter) SOG SRINAGAR, CRPF
Year 2000	17	ARMY (1 encounter) ARMY 25 GADWAL (1 encounter) ARMY 29 RR (1 encounter) ARMY 29 RR, SOG PATTAN (2 encounters) ARMY 3 FIELD REGIMENT, SOG TANGMARG (1 encounter) ARMY 34 RR (1 encounter) ARMY 3RD JAKLI (1 encounter) ARMY 5 COY (1 encounter) JAMMU AND KASHMIR POLICE (4 encounters) JAMMU AND KASHMIR POLICE, ARMY 2 RR (1 encounter) JAMMU AND KASHMIR POLICE, CRPF 10TH BN (1 encounter) SOG BARAMULLA (1 encounter) SOG PATTAN, CRPF 91 BN, ARMY (1 encounter)

Year 2001	11	ARMY 2 RR (1 encounter) ARMY 29 RR (5 encounters) ARMY JAKLI (1 encounter) BSF 16 BN (1 encounter) BSF 59 BN (1 encounter) SOG BARAMULLA, ARMY 29 RR (1 encounter) SOG PATTAN (1 encounter)
Year 2002	7	ARMY 29 RR (2 encounters) ARMY 29 RR, ARMY 15 JAKLI, SOG (1 encounter) ARMY 29 RR, SOG BARAMULLA (1 encounter) ARMY 29 RR, SOG PATTAN (3 encounters)
Year 2003	4	ARMY 02 RR, SOG PATTAN, CRPF 29 BN (1 encounter) ARMY 29 RR (1 encounter) BSF 154 BN, POLICE PATTAN (1 encounter) CRPF 29 BN, BSF 55 BN (1 encounter)
Year 2004	5	ARMY 29 RR (5 encounters)
Year 2005	4	ARMY 29 RR (3 encounters) SOG PATTAN (1 encounter)
Year 2006	2	ARMY 02 RR (1 encounter) SOG PATTAN, ARMY 29 RR (1 encounter)
Year 2007	4	ARMY 29 RR (2 encounters) ARMY 29 RR, SOG PATTAN (1 encounter) ARMY 52 RR (1 encounter)
Year 2008	2	ARMY 29 RR (1 encounter) CRPF 45 BN, ARMY 29 RR, POLICE PATTAN (1 encounter)
Year 2009	3	ARMY 52 RR SOG PATTAN, ARMY 29 RR, CRPF 45 BN SOG PATTAN, CRPF 117 BN, ARMY 29 RR
Year 2010	0	
Year 2011	0	
Year 2012	0	ARMY 29 RR, SOG PATTAN SOG BARAMULLA, SOG PATTAN, ARMY 26 RR, ARMY 26 RR, ARMY 28 RANI DOGRA
Year 2013	0	
Year 2014	0	

TOTAL NUMBER OF ENCOUNTERS REGISTERED IN PATTAN POLICE STATION	238
TOTAL NUMBER OF CIVILIANS KILLED IN 238 ENCOUNTERS REGISTERED AT PATTAN POLICE STATION	27
TOTAL NUMBER OF MILITANTS KILLED IN 238 ENCOUNTERS REGISTERED AT PATTAN POLICE STATION	225 (Out of which 45 remain unidentified)
TOTAL NUMBER OF SOLDIERS/POLICEMEN KILLED IN 238 ENCOUNTERS REGISTERED AT PATTAN POLICE STATION	23

Individual actors

The present study also provides an opportunity to identify individuals operating within the larger structures of impunity and violence.

While the names of army personnel that people remember has already been dealt with above [while detailing the camps], the SOG and MM operatives are listed below. The para-military, while present in the area, was not dominant and therefore there is little public memory of individuals from the CRPF or BSF.

Police and SOG

The SOG personnel present at the Palhallan army camp, or functioning at the time of the Palhallan army camp who people remember serving in the area are as follows:

- i. Assistant Sub-Inspector [ASI] Mohammad Rajab, in 1996. He was later killed.
 - ii. DSP Kuldeep in 1997. He was later killed.
- “Captain” Abdul Aziz Bhat, in Testimony No.5, remembers his name as being Kuldeep Sharma. Ghulam Mohammad

Najar, in Testimony No.34, states that he was replaced by DSP Gupta in 1998.

iii. ASI Surjeet Singh [he was a Driver/Constable on appointment in the 1980s but reached the rank of ASI out of turn due to the way he conducted himself against militancy] was present both in the time of ASI Mohammad Rajab and ASI Kuldeep. In 1998, ASI Surjeet occupied houses of Mohamamd Akbar Bhat, Ali Mohamamd Gojri and Mohammad Kamal Gojri. He was present till 2002

iv. SP (Operations) Ramesh Kumar Jalla was in charge of District Baramulla in 2000.

v. Deputy Superintendent of Police (DSP Operations) Abdul Rashid Khan alias Rashid Billa.

In addition to the SOG personnel, as per RTI information received in response to an RTI filed for information on names of Superintendent of Police officials from 1989 to end 2014 in all police districts of Jammu and Kashmir, from DSP, Police Headquarters, Baramulla, the following names were provided:

S. No.	Name of Superintendent of Police	Duration of service
1	Farooq Ahmad (KPS)	26/10/1987 to 22/05/1989
2	Nissar Ahmad (KPS)	22/05/1989 to 29/12/1989
3	Ghulam Hassan Khan (KPS)	29/12/1989 to 25/09/1990
4	Mohammad Amin Anjum (KPS)	25/09/1990 to 07/09/1992
5	S.M. Sahai (IPS)	07/09/1992 to 23/09/1994
6	Dilbagh Singh (IPS)	23/09/1994 to 06/09/1996
7	Muneer Ahmad Khan (KPS)	06/12/1996 to 24/06/1998
8	Mushtaq Sadiq (KPS)	26/06/1998 to 23/07/1999
9	A.Q Manhas (KPS)	23/07/1999 to 10/12/2001
10	Dr. Showkat Malik (KPS)	10/12/2001 to 08/01/2003
11	Javid Reyaz Bedar (KPS)	08/01/2003 to 10/12/2003
12	Muneer Ahmad Khan (IPS)	10/12/2003 to 02/08/2005
13	Ashkoor Ahmad Wani (IPS)	04/08/2005 to 12/05/2006
14	Viplaw Kumar (IPS)	15/05/2006 to 08/10/2007
15	Anand Jain (IPS)	20/11/2007 to 07/02/2009
16	Viplaw Kumar (IPS)	23/02/2009 to 12/01/2010
17	Shakeel Ahmad Beigh (KPS)	12/01/2010 to 07/06/2010
18	Sheikh Mehmood (KPS)	07/06/2010 to 19/07/2010
19	Manzoor Ahmad Antoo (KPS)	19/07/2010 to 26/12/2010
20	Dr. Mohammad Haseeb Mughal (KPS)	26/12/2010 to 30/04/2012
21	Anand Jain (IPS)	02/05/2012 to 25/03/2013
22	Zubair Ahmad Khan (KPS)	26/06/2013 to 03/03/2014
23	Suhail Munawar Mir (KPS)	03/03/2014 to 20/10/2014
24	Zubair Ahmad Khan (KPS)	20/10/2014 to 07/11/2014
25	Suhail Munawar Mir (KPS)	7/11/2014 to _____ [Date not known]
26	Zubair Ahmad Khan	Present SP

The Jammu and Kashmir Police refused to provide information on names of SHOs and SP Operations in Jammu and Kashmir, including Baramulla district.

Government gunmen

The MM operatives who people remember working in the area are as follows:

- i. Abdul Hamid Malik alias Athar, resident of Chaksari, Pattan
- ii. Mohammad Ramzan Mian, alias Hayat Khan, resident of Pattan. He was later killed.
- iii. Azam Khan, resident of Hokar, Badasgam, Achabal, Islamabad District. He was later killed.
- iv. Abdul Majid Mir, alias Shaheen, resident of Nihalpura, Pattan. He was later killed.
- v. Ghulam Ahmad Waza, alias Amma Waza, resident of Palhallan. He was later killed.
- vi. Ghulam Nabi Tantray, alias Kawa, resident of Palhallan. He was later killed. He had a National Conference background, and did not himself carry weapons.
- vii. Mohammad Yousuf Tantray, alias Kawa, son of Ghulam Nabi Tantray, resident of Palhallan. He was later killed.
- viii. Nazir Ahmad Bhat alias Nazir Halwa, resident of Buran, Pattan. He was later killed.
- ix. Mohammad Subhan Tantray, alias Kawa, resident of Palhallan. He was later killed.
- x. Ismail Kawa, resident of Palhallan.
- xi. Mushtaq Zargar, resident of Pattan.
- xii. Showkat Ahmad alias Shoga, resident of Buran, Pattan
- xiii. Mohammad Rafiq Mir, alias Adil, resident of Pattan.
- xiv. Shahnawaz, used to be based at Kaw Mohalla, Palhallan. He was from outside Pattan. He was an infamous torturer. He was also considered the right hand man of DSP Kuldeep.
- xv. Bashir Ahmad Rather alias Javed, resident of Nihalpura, Pattan
- xvi. Ghulam Hassan Bhat alias Hass Kalloo, resident of Buran, Pattan.
- xvii. Mohammad Maqbool Tantray, alias Kawa, resident of Palhallan. He was later a victim of enforced disappearance.
- xviii. Shahbaz Ganie, resident of Tangmarg. Presently works as a Special Police Officer [SPO].
- xix. Abdul Rashid Ganie, resident of Palhallan. He was later killed.
- xx. Abdul Rehman Ganie, alias Sher Khan alias Sheru, resident of Mirgund. He was later a victim of enforced disappearance.
- xxi. Nazir Ahmad Hurra, resident of Naidkhai. Presently works as a SPO in Sumbal, Bandipora.
- xxii. Abdul Aziz Rather, resident of Palhallan. He was later killed.
- xxiii. Bashir Rather, son of Abdul Aziz Rather.
- xxiv. Habibullah Mir.
- xxv. Latief Ahmad Mir, son of Habibullah Mir.
- xxvi. Ghulam Nabi Kochka.
- xxvii. Jabbar Kanna.
- xxviii. Abdul Rashid Ganai, was working with Gharwal Rifles, Palhallan army camp.
- xxix. Abdul Rashid Ganai (not same as above), was working with Gharwal Rifles, Palhallan army camp.
- xxx. Mohammad Akbar.

xxxi. Reyaz Ahmad Sadda, son of Ghulam Mohammad, resident of Pattan. Presently works as a SPO in Sumbal, Bandipora.

xxxii. Bashir Ahmad Ganai, was working with Gharwal Rifles, Palhallan army camp.

xxxiii. Mohammad Ismail Tantray, resident of Palhallan. He did not carry weapons. He had a National Conference background, and was a lineman in the Power Department. He was later killed.

xxxiv. Mohammad Abdullah Yatoo, resident of Wusan. He had a National Conference background. He was later killed.

xxxv. Manna Grenade. He was later killed.

xxxvi. Abdul Hamid Khan alias Saleem, son of Saif Khan, resident of Wanigam Bala.

xxxvii. Habib [Saleem and Habib were both at the time, 1995, personal security officers to Abdul Ahad Yatoo who contested the 1996 and subsequent assembly/parliamentary elections].

xxxviii. Rizwan, resident of Wanigam.

xxxix. Ghulam Mohammad Lone, alias Gul Kandur, resident of Palhallan.

xl. Mohammad Shaban Tantray, resident of Tantraypora, Palhallan and used to be based at Kaw Mohalla, Palhallan.

xli. Abdul Rashid Hajam, resident of Raipora and used to be based at Kaw Mohalla, Palhallan.

xlii. Abdul Rashid Malla, son of Ghulam Qadir Malla, resident of Raipora and used to be based at Kaw Mohalla, Palhallan.

xliii. Abdul Rasheed Hakim, son of Ghulam Nabi Hakim, and used to be based at Kaw Mohalla, Palhallan.

xliv. Ghulam Mohammad, resident of Kadipora, Tangmarg and used to be based at Kaw Mohalla, Palhallan.

xlvi. Mukhtar, resident of Mirgund and used to be based at Kaw Mohalla, Palhallan.

xlvi. Ghulam Mohiuddin Ganie, son of Abdul Rehman Ganie, resident of Pattan. He is presently working as SPO in Achabal, Islamabad.

xlvi. Khalil Ahmad Tantray.

xlvi. Abdul Rashid Tantray.

Part D

Complexities and Questions

The Structures of Violence

This chapter while seeking to unravel the complex structures of violence at play within particular localities has only been able to do so to a limited extent. To understand how violence is [and was] perpetrated in Jammu and Kashmir a more detailed investigation is required. Examining the role of the various actors involved behind the scenes whether political or non-political, formal or informal, would lead to a more comprehensive understanding of the system in place in Jammu and Kashmir. This report has therefore been only an attempt to begin this exploration. A particular impediment for the researchers was the lack of transparency from the government and this did not allow the researchers to make an indepth study of the entire scale of deployment of army and other forces. Information available is sketchy and what is presented here has sometimes been obtained from those who in one way or the other have worked or cooperated with the structures of army.

Therefore it requires unbiased and independent corroboration. This chapter has not made out the entire legal case against the camps in question, but, instead, within the framework of command responsibility, and the legal understanding that the direct perpetration of crime is carried out through individual functionaries who bear criminal responsibility for their actions, this chapter has merely begun the process of collecting the evidence.

Another feature of the report is the nature of evidence that was collected. As we are in an active and ongoing conflict, and the researchers could not guarantee any of the witnesses any form of protection [besides anonymity] there was reluctance on the part of some witnesses to provide evidence. In addition, it was difficult to speak to “insiders” [persons who continue to work within the system or witnesses who worked for the system at a senior level]. In addition, owing to the passage of time, details are often lost to memory and that has affected the quality of the evidence.

The extent of violence perpetrated in the two areas of case study was staggering. To that extent, this report has only managed to present a small sliver of the larger experience of the people from Islamabad and Pattan. For example, the occupation of land and the effect on the people and the local economy has not been analyzed. But, the evidence exists and many people are ready to talk. Tactical warfare in the form of creating differences between communities, the use of MM and Ikhwan, and the cycle of violence that the Indian State has perpetrated is hopefully illustrated in this report but not explained or studied at length. Further, the use of Kashmiri Pandit houses by the forces has been referred to in this report. In response to a RTI filed on destruction of Kashmiri minority properties in Jammu and Kashmir from 1989 to 2015, information, as summarized in **Annexure 5**, for Islamabad and Baramulla was provided but the researchers were unable to investigate this aspect further.

The greatest lacunae in this report is certainly the absence of cases evidencing sexual violence. In Jammu and Kashmir, sexual violence—perpetrated against both women and men—has been documented by human rights groups to be pervasive, and a consistent feature of the actions of the army and other armed forces. But, the case studies presented here do not collate or present this evidence. The reasons are numerous and include the reluctance of affected individuals to speak out due to continuing fear of the State's response, the stigmatizing reactions of their own communities, and, most importantly no tangible benefits – for example justice or Punishment of the Perpetrators – in sight.

Pro-Freedom parties: Responsibility for Political patronage

An issue that the researchers of the report had to consider was the role of the Pro-Freedom political party The Muslim Conference vis-à-vis the MM. Certain pieces of evidence suggested a possible role of the Muslim Conference leadership in the change of course that the MM undertook towards the army. Specifically, at Testimony no.12 [**Annexure 1**], Bilal Siddiqui, (former chief of the MM and presently member of the Pro Freedom Alliance All party Hurriyat Conference) referred

to a meeting in Chaksari, Pattan where Professor Abdul Gani Bhat (President of The Muslim Conference) informed Bilal Siddiqui, the then Commander-in- Chief of MM, in the presence of other Commanders that a senior army official had contacted Professor Abdul Gani Bhat and offered to support MM against HM. Bilal Siddiqui also stated that, in violation of the agreement between MM and Muslim Conference, Professor Gani Bhat paid money directly to MM commanders on the ground and bypassed the MM senior leadership/command. This was a repeated cause of contention between the MM leadership in Pakistan, Srinagar and the Muslim Conference leadership. Another piece of evidence was provided by an anonymous source [Witness C, Testimony no.10, **Annexure 3**], that some people, including Commander Athar, met Professor Abdul Gani Bhat in Srinagar at his residence in Wazir Bagh, after the formation of MM when they were under immense pressure of HM – presumably 1994 – and sought advice. Professor Gani Bhat's advice was to kill 10/15 Jamaat-e-Islami members. This evidence could not be ignored. As a consequence the researchers sought to further enquire into these aspects. The evidence regarding a meeting in Srinagar where Professor Abdul Gani Bhat is alleged to have suggested the killing of Jamaat-e-Islami⁴ workers is anonymous and could not be completely verified because Athar and the other participant Abdul Jabbar Bhat, while confirming the meeting, did not confirm Professor Abdul Gani Bhat's talk of killing Jamaat-e-Islami workers. Abdul Jabbar Bhat is a member of Professor Abdul Gani Bhat's Muslim Conference. Athar, the other participant of the meeting was a top commander of MM and possibly involved in many actions in the area. In addition, he is a victim of an attack on him in 2001 in which he survived miraculously. Further, in the interview with Athar, the researchers witnessed reluctance, irritation and contradictions. Athar, before joining the insurgency and counter-insurgency was a member of Jammu and Kashmir police.

There was a meeting in Chaksari in April/May 1994 where Professor Abdul Gani Bhat is alleged to have offered to facilitate army support for the MM, according to Bilal Siddiqui. Professor Abdul Gani Bhat however responded by refuting this unequivocally. But, he stated that he had a meeting with the “Brigadier General” [this rank does not in fact exist] of Indian army who did not offer any such support but the discussion was on Kashmir conflict. Athar, who is said to be present in the meeting as per Bilal Siddiqui, also denies being in that meeting. While probing Athar on this issue there was some hesitation in his answers initially but later he flatly refuted the evidence. Bilal Siddiqui also alleged that MM commanders were funded directly by the Muslim Conference. Professor Abdul Gani Bhat however refutes this unequivocally and calls it “tendentious”. There was no other corroboration of this fact. But, other evidence clearly suggests that Professor Abdul Gani Bhat was in charge of dealing with money matters for the party, and his own testimony was that he was ‘de-facto in charge’. Further, he also accepted that on an individual basis he may have under coercion given money to different militants who asked for support. His full testimony is at Testimony No.2, **Annexure 1**. But, the larger question remains. What responsibility would a political party – Muslim Conference in this case – have for

⁴ Jamat e Islami is a socio cultural and political organization considered to be the political patrons of the Hizbul Mujahideen an indigenous armed militant group from 1990 to 1997

the criminal actions of a militant wing that they patronized? We asked Professor Abdul Gani Bhat this. This was particularly important considering the testimony of Sumji [also a Muslim Conference leader in those days] that Professor Gani Bhat had regular meetings with army and intelligence officials. Professor Gani Bhat accepts that he had control of the Muslim Conference but he says there was no question of controlling the militants. While he states that within a few months the association of MM with army was an “open secret” – he states there was nothing the Muslim Conference could do publicly, that is, they could not publicly condemn the militant group MM. But, he states that they did disassociate from MM in letter and spirit. There was no public announcement to this effect, however and in fact there were no meetings held even within Muslim Conference about the MM. Therefore in public perception the Muslim Conference continued as patron of MM right until its funding was discontinued in 1996 by Pakistan. Most importantly, Professor Gani Bhat stressed on the fact that the circumstances in the 1990s were particularly difficult and it was not easy to be as bold as one could perhaps be today.

The above complexity is compounded by the question of the funding of MM by Pakistan which continued till 1996. Our limited research suggests that Pakistan supported militant groups which had no base or popular following, and in fact persuaded them to receive political support of political groups which themselves did not have any base or following. These factors, that have not been a subject of this study per se, would need to be properly investigated and analyzed, to arrive at a more accurate understanding of the responsibility and role of political parties in the widespread Human rights violations perpetrated by government militias of ‘surrendered’ militants.

Interestingly the other government sponsored group Ikhwan-ul-Muslimeen for sometime enjoyed the political patronage of Maulana Abbas Ansari of the Ittehad-ul-Muslimeen, also a constituent of All Parties Hurriyat Conference. It is not certain when Abbas Ansari distanced himself from the Ikhwan led by Kuka Parray in North Kashmir and Liyaqat Ali Khan in South Kashmir. The connections between political leadership and armed groups is germane to issues of responsibility which have not been fully investigated in this report.

During the research it emerged that All Parties Hurriyat Conference in the initial years of Ikhwan and MM did not publicly distance itself from or denounce the violent acts of these groups. One of the reasons ascribed is that it was discussed within the Hurriyat Conference Executive Council that probably the cause for the existence of Ikhwan and MM was only their opposition to HM and Jamaat-e-Islami. This was claimed to be a natural response to the domination of HM and Jamaat-e-Islami. It was learnt that in 1995, Hurriyat Conference on the insistence of Jamaat-e-Islami [then a part of the Hurriyat Conference] constituted a fact finding team led by Ghulam Rasool Wani to probe the antecedents of and allegations against MM and Ikhwan. The report by Ghulam Rasool Wani suggested that Ikhwan and MM were not against the Kashmiri movement for Self determination but only anti-HM and Jamaat-e-Islami in character. The argument was put forward that even in the past, other groups such as JKLF and HM or HM and Al-Jehad had conflicts and therefore no group should be isolated as being ‘anti-movement’. Syed Ali Shah Geelani, (President of APHC and former representative of

Jamaat-e-Islami) stated to the researchers that the united Hurriyat had never condemned the existence of Ikhwan or MM. According to him on several occasions however his then party Jamat e Islami had condemned the Ikhwan. Further research is required to understand the dynamics within the Hurriyat Conference which were responsible for their silence and inaction and the motivations and compulsions that influenced their course of action. This research would necessarily have to understand the circumstances prevalent at the time where speaking out had immediate consequences.

Pro-India parties: Responsibility for continued Political patronage and Sanctuary

This report does not investigate the role of pro-India parties in providing sanctuary to forces such as MM and Ikhwan. While the pro-India parties have consistently worked towards ensuring impunity for the forces [under the cover of routine statements condemning killings or bad laws], their role in the rehabilitation of MM and Ikhwan cadres – almost entirely at the higher levels - needs further enquiry.

The researchers encountered MM and Ikhwan operatives who were critical of the governments in Jammu and Kashmir for ignoring and discarding them. This criticism seemingly stemmed from the fact that while initially the government/administration were defunct, subsequently they did gain a role [albeit still subject ultimately to the army or Government of India ministries] and it was felt that the MM and Ikhwan were not provided any relief. At the same time, the researchers also encountered through conversations examples of MM and Ikhwan operatives who were offered sanctuary by pro-India parties and other agencies, including the army. Whether it is an Ikhwan such as Usman Majeed (now member of the Congress party) or Masrat Bilal (now member of PDP), Liyaqat Ali Khan or Sheikh Tahir (part of the Territorial army) who have never been investigated or prosecuted for any of the allegations against them, the role of Pro-India political parties and specific state officials, in protecting these well known perpetrators of human rights abuses, needs to be further investigated.

CHART NO. 1:

DEPLOYMENT OF ARMY IN JAMMU AND KASHMIR

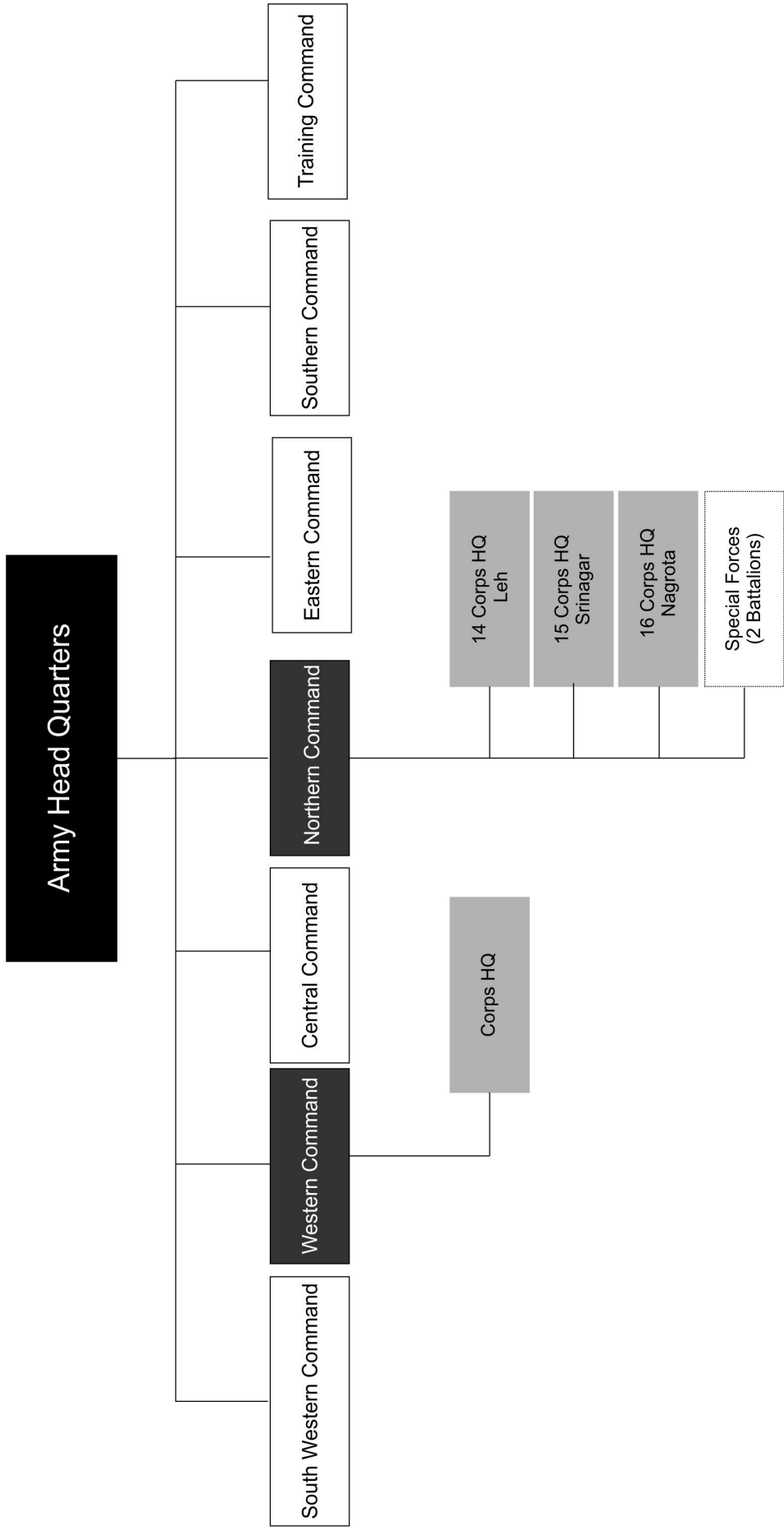


CHART NO. 2: DEPLOYMENT OF ARMY IN 14 CORPS [Ladakh Region]

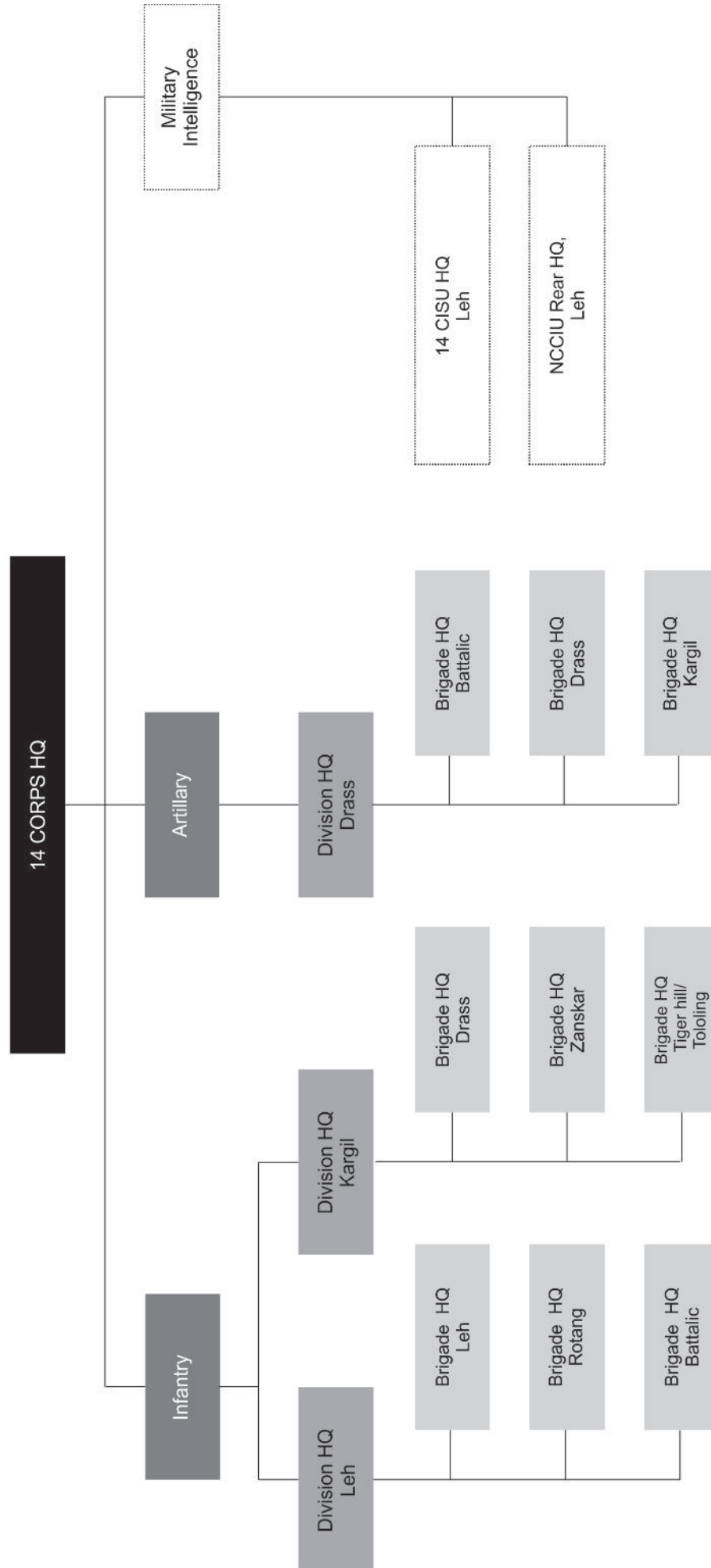


CHART NO. 3: DEPLOYMENT OF ARMY IN 15 CORPS, SRINAGAR [Kashmir Region]

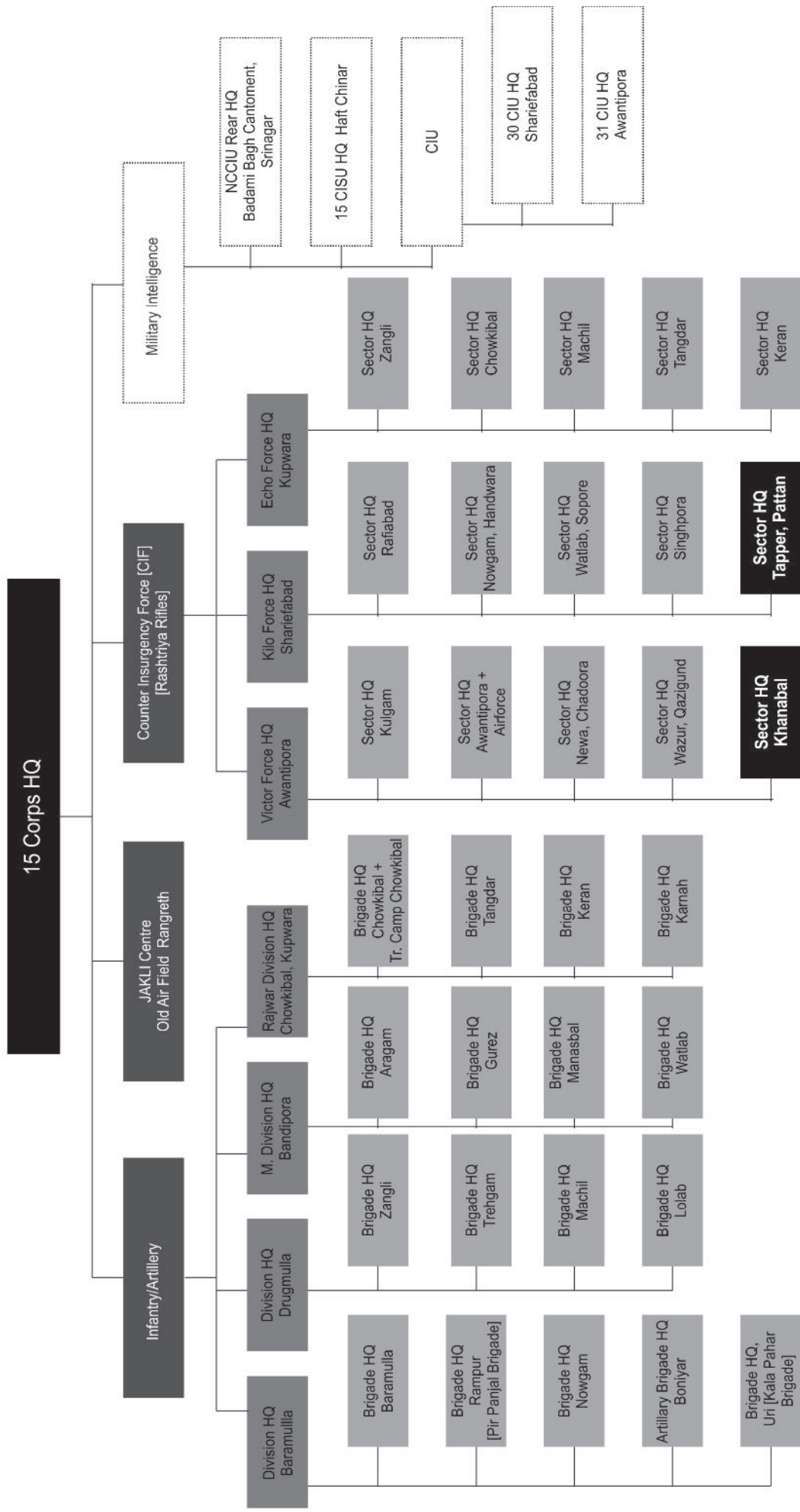


CHART NO. 4: DEPLOYMENT OF ARMY IN 16 CORPS, NAGROTA [Jammu Region]

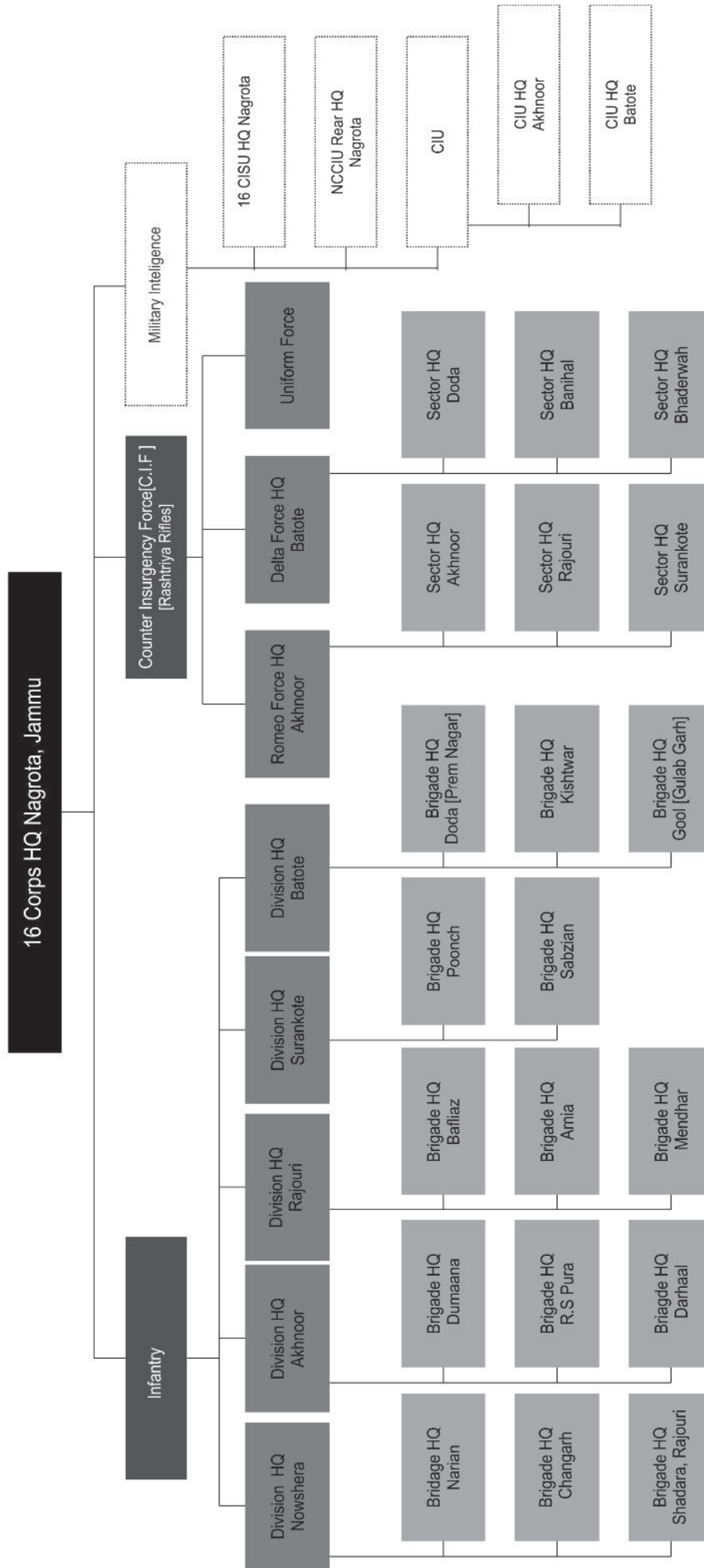


CHART NO. 5: DEPLOYMENT OF ARMY IN WESTERN COMMAND [Jammu Region]

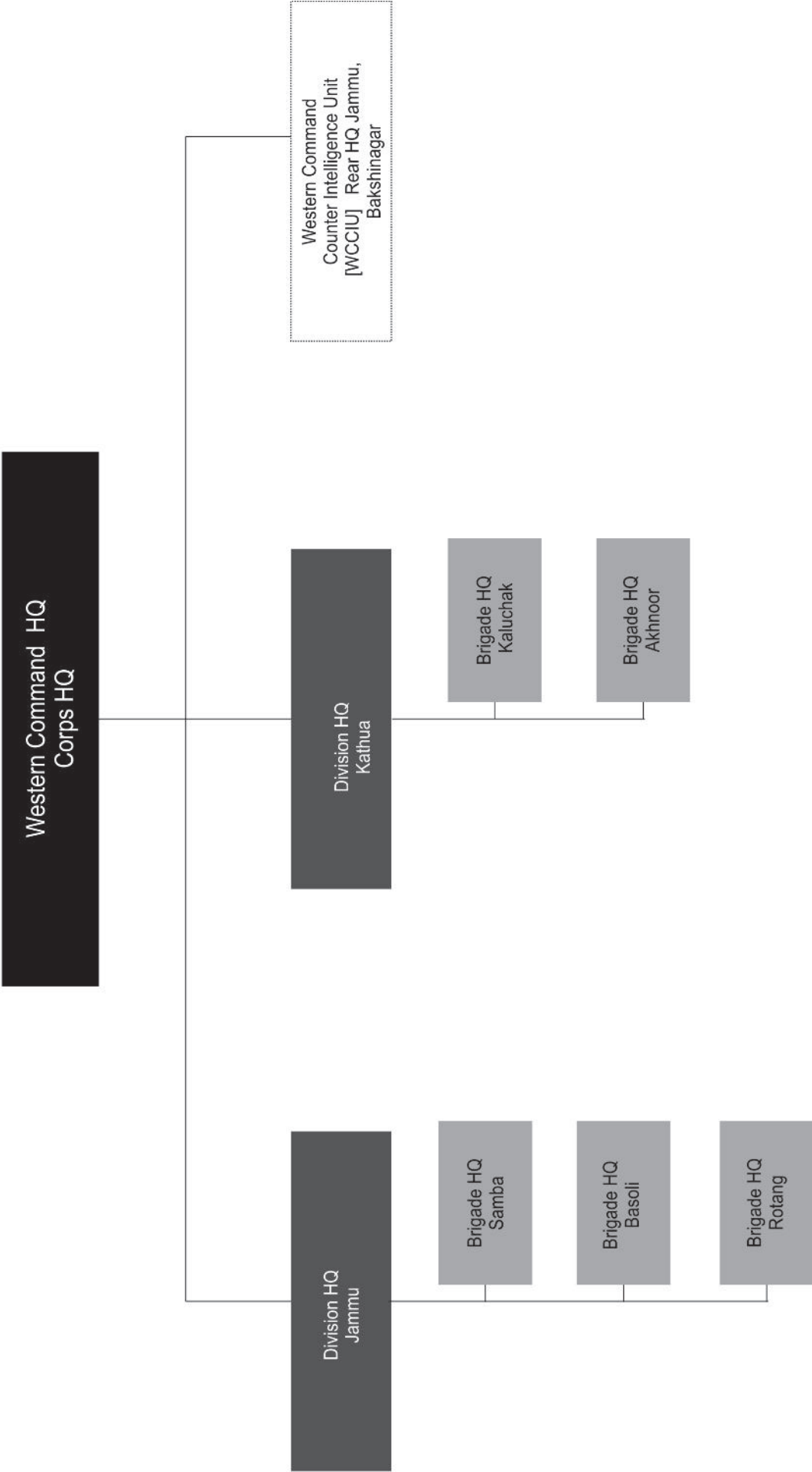


CHART NO. 6:

DEPLOYMENT OF BSF IN JAMMU & KASHMIR

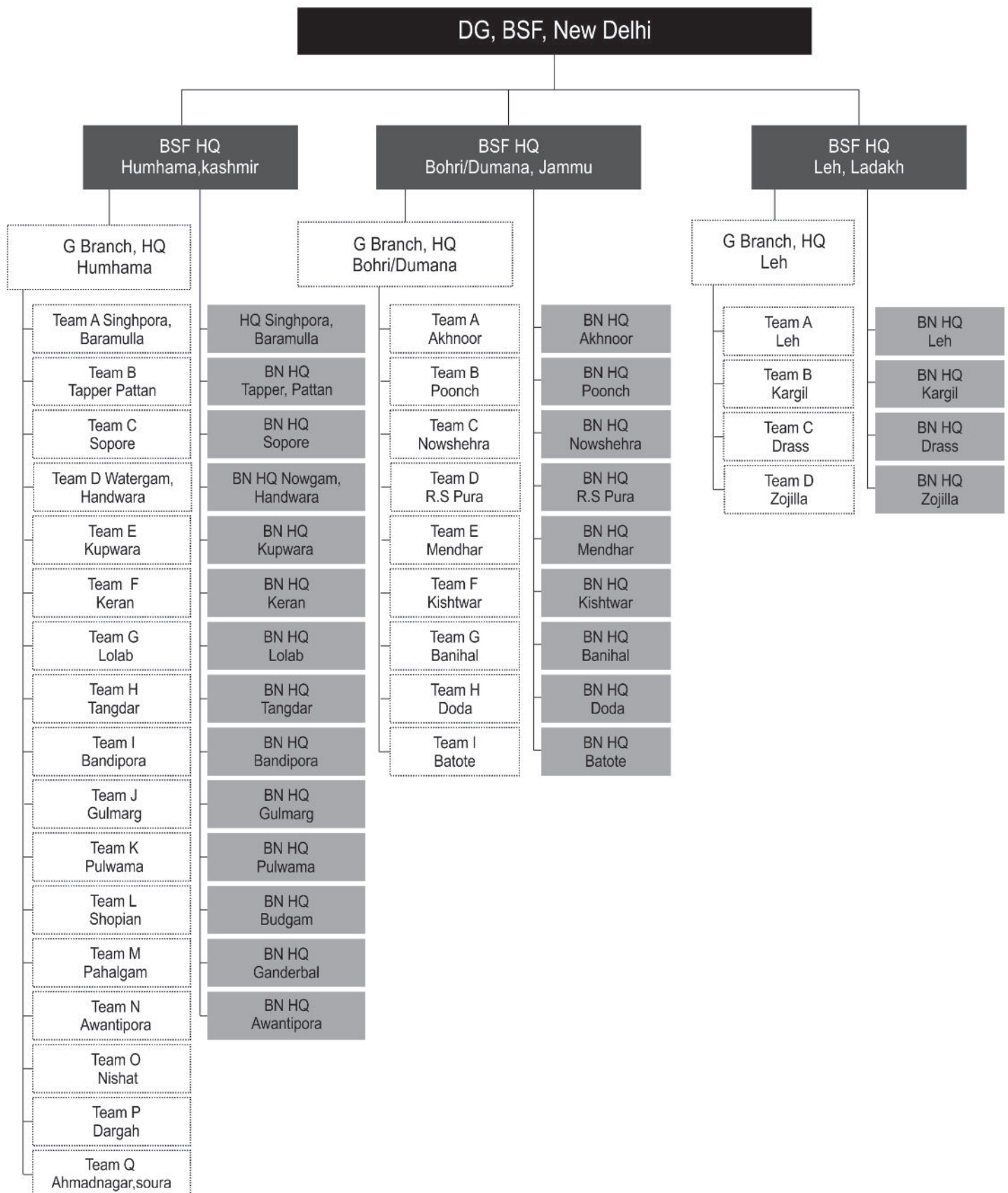
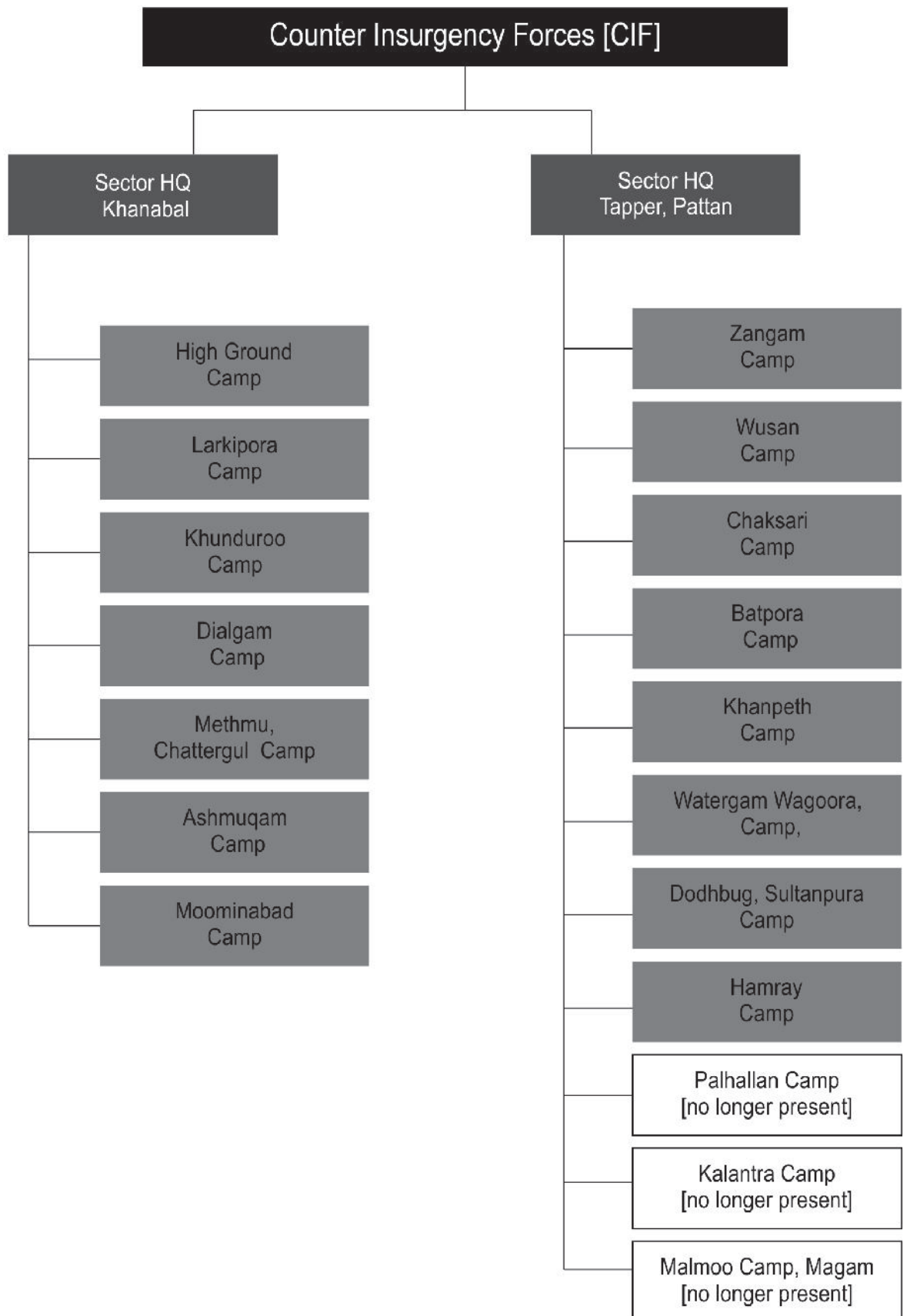


CHART NO. 7:

CASE STUDIES



LIST 1: NCCIU

The total number of DETs in the NCCIU in Jammu and Kashmir are: 50

No.	NCCIU REAR HQ 14 CORPS, LEH	NCCIU REAR HQ 15 CORPS, SRINAGAR	NCCIU REAR HQ 16 CORPS, NAGROTA
1.	DET LEH	DET BARAMULLA	DET BHADERWAH
2.	DET KARGIL	DET DRAGMULLA	DET SINTHAN TOP
3.	DET NUBRA	DET MACHAL	DET BANIHAL
4.	DET DRASS	DET KARNA	DET KISHTIWAR
5.	DET ROHTANG	DET ZANGLI	DET RAMBAN
6.	DET ZOJILA	DET CHOWKIBAL	DET NOWSHERA, RAJOURI
7.		DET GULMARG	DET CHANGAR
8.		DET TAPPAR, PATTAN	DET JAMMU
9.		DET WATERGAM, RAFIABAD	DET SURANKOTE
10.		DET SHARIEFABAD	DET NARIAN
11.		DET AWANTIPORA, VICTORFORCE	DET RAJOURI
12.		DET TANGDAR	DET POONCH
13.		DET KHANABAL	DET AKHNOOR
14.		DET PULWAMA	DET MENDHAR
15.		DET SONMARG	DET GULE
16.		DET BANDIPORA	DET DODA
17.		DET GUREZ	DET BASOLI
18.		DET URI	DET KALU CHOK
19.		DET KULGAM	DET NAGROTA
20.		DET PAHALGAM, PANJTARNI	DET BATOTE
21.		DET GANDERBAL	
22.		DET KANGAN	
23.		DET SINGHPORA	
24.		DET SHOPIAN	

LIST 2: WCCIU

The total number of DETs in WCCIU as relevant to Jammu and Kashmir are: 13

- 1.DET KALUCHAK, JAMMU
- 2.DET MIRANSAHAB, JAMMU
- 3.DET BADIBRAMNA, JAMMU
- 4.DET SAMBA, JAMMU
- 5.DET KATHUA, JAMMU
- 6.DET R.S PURA, JAMMU
- 7.DET LAKHANPUR, JAMMU
- 8.DET BASOLI, JAMMU
- 9.DET AKHNOOR, JAMMU
- 10.DET CHAMB, JAMMU
- 11.DET JORIAN, JAMMU
- 12.DET LEH
- 13.DET ROTANG PASS, LEH

LIST 3: CIU

In Jammu and Kashmir the CIU is only in the 15 and 16 Corps.
The total number of DETs in the CIU are: 87.

No.	31 CIU HQ AWANTIPORA [17 DETS]	30 CIU HQ SHARIEFABAD [17 DETS]	CIU HQ NO.1 AKHNOOR [31 DETS]	CIU HQ NO.2 BATOTE [22 DETS]
1.	DET WAZUR QAZIGUND	DET BARAMULLA	DET AKHNOOR	DET BATOTE
2.	DET KHANABAL	DET RAFIABAD	DET CHAMB	DET RAMBAN
3.	DET KULGAM	DET WATERGAM, RAFIABAD	DET JORIAN	DET RAMSU
4.	DET NEWA CHADOORA	DET NOWGAM, HANDWARA	DET DUMANA, JAMMU	DET BANIHAL
5.	DET NANWAN PAHALGAM	DET SINGHPORA, BARAMULLA	DET NARIAN	DET DODA
6.	DET DURU SHAHABAD	DET WATLAB	DET NOWSHEHRA	DET PREM NAGAR, DODA
7.	DET BUDGAM	DET HYDERBAIG	DET R.S PURA	DET KISTIWAR
8.	DET TRAL	DET JANGLI, KUPWARA	DET CHANGARH	DET PEER GALI, MUGHAL ROAD
9.	DET AWANTIPORA	DET MACHAL, KUPWARA	DET SHADARA	DET SINTHAN TOP
10.	DET GANGANAGAR, SONAMARG	DET GULMARG	DET KALUCHAK	DET PATNI TOP
11.	DET MARKUNDAL, SONAWARI	DET REBAN SOPORE	DET SAMBA	DET GOOL
12.	DET MANASBAL, BANDIPORA	DET BONIYAR, URI	DET BAFLIAZ	DET ARNAS
13.	DET SINTHAN TOP, KUKERNAG	DET SHARIEFABAD	DET RAJOURI	DET GULAB GARH
14.	DET PULWAMA	DET GUREZ	DET MIRAN SAHAB, SATWARI, JAMMU	DET CHENANI
15.	3 Reserve DETs	3 Reserve DETs	DET KATRA	DET BADERWAH
16.			DET REASI	7 Reserve DETs
17.			DET MENDAR	
18.			DET SURANKOTE	
19.			DET POONCH	
20.			DET KALAKOTE.	
21.			DET MARH	
22.			DET BASOLI	
23.			DET BADI BRAMNA	
24.			DET HAWELI	
25.			DET SUNDARBANI	
26.			DET ARNIA SECTOR	
27.			DET UDHAMPUR	
28.			4 Reserve DETs	

LIST 4: CISU

Total DETS in Jammu and Kashmir: 77

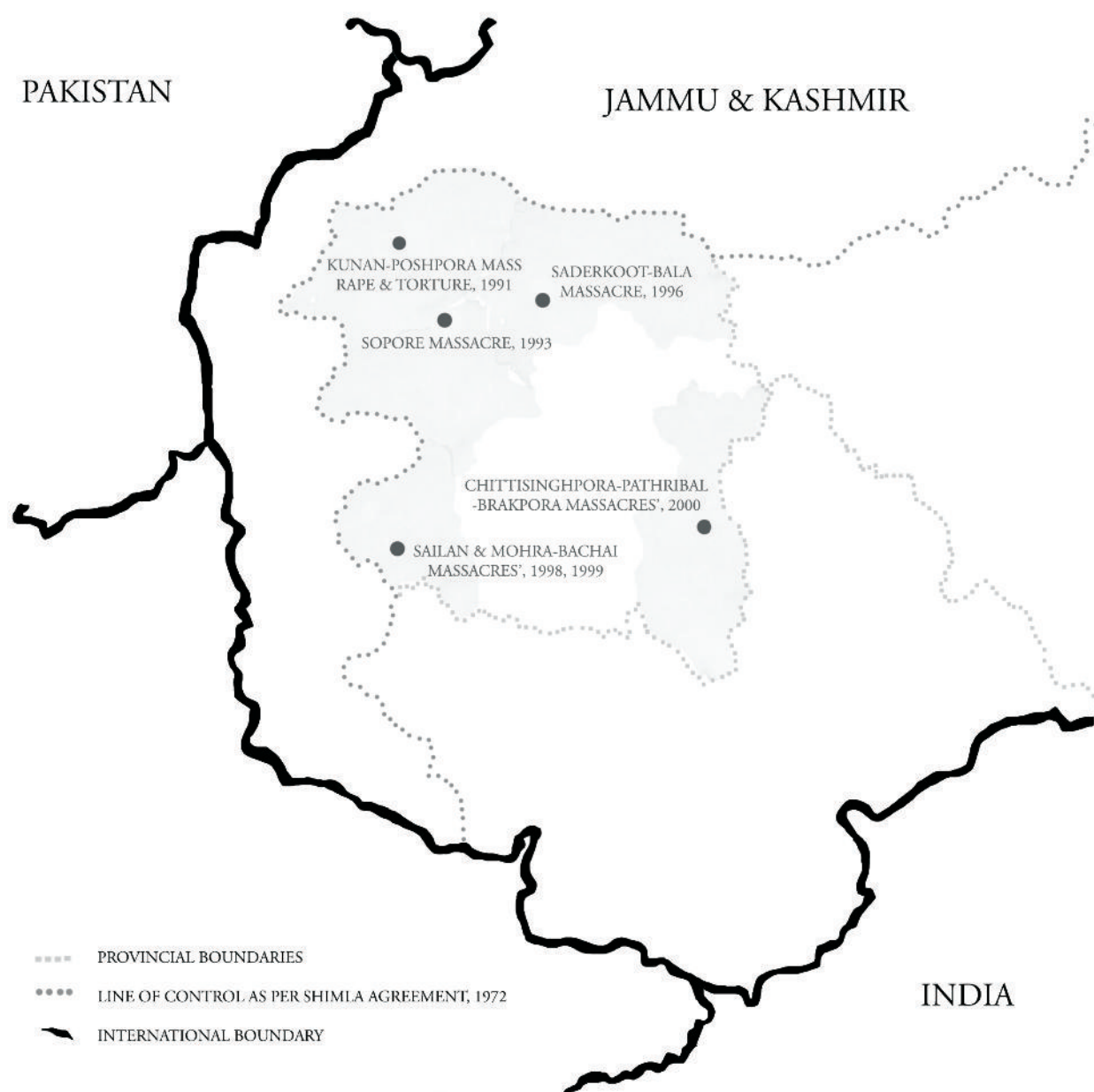
No.	14 CISU HQ Leh in 14 Corps [15 DETS]	15 CISU HQ Haft Chinar, Srinagar in 15 Corps [31 DETS]	16 CISU HQ Nagrota, Jammu in 16 Corps [31 DETS]
1.	DET DRASS	DET BARAMULLA	DET JAMMU KALUCHAK
2.	DET KARGIL	DET WATERGAM	DET DUMANA, JAMMU
3.	DET ZANSKAR	DET HYDERBEIGH	DET AKHNOOR
4.	DET LEH	DET T NOWGAM, HANDWARA	DET NOWSHEHRA
5.	DET ROTANG [Himachal/Ladakh border]	DET DRUGMULLA	DET SUNDERBANI
6.	DET ZOJILLA	DET JANGLI	DET NARIAN
7.	DET TOLOLING	DET KERAN	DET RAJOURI
8.	DET TIGER HILL	DET URI	DET CHANGARH
9.	DET BALTAL, SONAMARG	DET BONIYAR	DET SURANKOTE
10.	6 Reserve DETs	DET SINGHPORA	DET MENDAR
11.		DET GULMARG	DET HAWELI [POONCH]
12.		DET WATLAB	DET POONCH
13.		DET MANASBAL	DET ARNIA
14.		DET GANDERBAL	DET R.S PURA
15.		DET SHARIFABAD	DET SAMBA
16.		DET AWANTIPORA	DET KATHUA
17.		DET KHANABAL	DET GHOOOL
18.		DET PULWAMA	DET ARNAAS
19.		DET NEWA	DET UDHAMPUR
20.		DET MARKUNDAL	DET BATOTE
21.		DET BANDIPORA	DET PREM Nagar, DODA
22.		DET SHOPIAN	DET KISHTWAR
23.		DET TRAL	DET PATNITOP
24.		DET ZEWAN	DET MAHORE
25.		DET PAHALGAM	DET RAMBAN
26.		DET KOKERNAG	DET DARHAL
27.		DET TANGDAR	DET BANIHAI
28.		DET GUREZ	DET BAFLIAZ
29.		DET NISHAT	DET CHAMB
30.		DET AHMADNAGAR, SOURA, SRINAGAR	DET SINTHANTOP
31.		DET AMARGARH	DET PEER GALI, MUGHAL ROAD [Rotation between HQ and this location. At location from May-October]



CHAPTER 2: THEATRES OF VIOLENCE

A Study of Mass Violence

- A. THE MASS RAPE AND TORTURE AT KUNAN AND POSHPORA, KUPWARA DISTRICT, 1991
- B. THE MASSACRE AT SOPORE, BARAMULLA DISTRICT, 1993
- C. THE MASSACRE AT SADERKOOT-BALA, BANDIPORA DISTRICT,¹ 1996
- D. THE MASSACRES' AT SAILAN & MOHRA BACHAI, POONCH DISTRICT, 1998, 1999
- E. THE MASSACRES' AT CHITTISINGHPORA, PATHRIBAL & BRAKPORA, ISLAMABAD DISTRICT, 2000



Map showing the locations of Massacres

1 Saderkoot-Bala then lay in the Baramulla District of Kashmir.

A NOTE ON MASS VIOLENCE

"The army targeted the two Jumma Khans because they had long beards and wore dastaars², the beard and the dastar is a part of our cultural and religious tradition but for the army it meant the two could be passed off as Pakistani militants."

-Abdul Rashid Khan, son of Jumma Khan, killed in the Pathribal 'fake encounter'

"The Kunan rape story on closer examination turns out to be a massive hoax orchestrated by militant groups and their sympathizers and mentors in Kashmir and abroad as part of a sustained and cleverly contrived strategy of psychological warfare..."

- B.G Verghese, Crisis and Credibility, Report by Press Council of India

The military occupation of Jammu and Kashmir by the Indian State is enacted everyday through variegated displays of power aimed at inscribing fear on not only the bodies and minds of the local population but also on the spaces they inhabit through the performance of brutality, both small and spectacular. Each of the five instances of mass violence documented in this chapter explores a gamut of spectacular brutality—mass rape and torture in Kunan-Poshpora, massacre in Sopore, Saitan and Chittisingpora, 'fake encounter' in Pathribal, killing by the State created and managed Ikhwan³ in Saderkoot-Bala, and killing as a result of firing at a protest in Brakpora. The five mass crimes described and analysed in this Chapter, represent only a fraction of the total number of such events, that have occurred with terrorizing frequency in Jammu and Kashmir. They have been selected not for their exceptionality, but because of the availability of enough information gathered slowly over years of litigation and interaction with survivors, to present a well corroborated and detailed narrative. IPTK-APDP has also collected information on 51 mass killings, (involving the murder of 3 or more individuals in a single incident) based on news reports, which is summarized as a table, in **Annexure 5**.

From the cases presented in this chapter it emerges that those who investigate mass violence often describe it as an "indiscriminate" act of "madness" perpetrated by "violent beasts". Whereas the sheer intensity and scale of violence in each case mandates some element of prior planning inherent to militarism, what also emerges is a perverse yet almost scientific logic where 'militant' is constructed as a body that can be subjected to punishment with impunity, and without accountability, legal or political. Such a conception is able to suck into it not only the militants themselves but also accommodate a variety of other persons and political opinions. This includes the families of militants, those who express support for the *Tehreek*⁴, and political workers of parties with alternative visions for the political sovereignty of Kashmir. Even those who were an active part of electoral politics but used their position to engineer a particular political future

different from the one espoused by the Ikhwan at the time, were targeted on grounds of being 'militant', as in the case of the massacre at Saderkoot. 'Militant' can also refer to those who dare to humanize themselves and their dead through demands for justice via collective protest, as in the case of the Brakpora firing and the families of those killed in the Pathribal 'fake encounter'.

In Pathribal, the personnel of the 7 Rashtriya Rifles [RR] admitted to being present at the site of the massacre as part of an 'operation' to nab 'militants' responsible for the Chittisinghpura massacre; in Sopore, the 94 Battalion Border Security Force [BSF] alleged that the 46 persons shot dead or burnt were killed in 'cross-firing' with 'militants'; the mass rape and torture in Kunan-Poshpora which is denied by the personnel of 4 Rajputana Rifles, exists only as a 'hoax...orchestrated by militants.' Yet again, in Saitan, the Central Bureau of Investigation is of the opinion that the massacre was carried out by 'Pak-trained militants.' In all these instances, the specter of the 'militant', even 'foreign militant', conceived of as 'terrorist', is conveniently invoked in the face of concrete legal evidence to the contrary. This occurs even as the allegations later unravel at the slightest probing, and are shown to be not only false and fabricated but also revelatory of the premeditated criminality perpetrated by the military, under legal cover of martial laws like the Armed Forces Special Powers Act [AFSPA].

Each one of the incidents of mass violence explored in this chapter is a stage-managed spectacle in a 'theatre of violence', enacted in a space intentionally delineated for what it represents. For example, in Sopore, a massacre of 46 people was carried out in tandem with the burning of the Main Chowk and adjoining areas. The personnel of the 94 Battalion BSF who carried out the massacre and arson refer to the area as being full of "escape routes" or "hideouts" used by "militants". Such a 'stage' where the mass violence is enacted is often a community space where the collective punishment—shooting, setting fire, hacking to death—is publically witnessed. But even when it is not, when the violence is enacted within what is a domestic, everyday setting, conceptions of ownership of space are necessarily inverted in favor of the perpetrator. For example in Kunan-Poshpora *kuthars*, small wooden and mud structures used to store grain, integral to any Kashmiri village, are transformed into torture centers where men from "suspected houses" in the village are given electric shocks, roller treatments and beatings, while the army men warm themselves by lighting a fire and preparing tea. Men from the Kunan-Poshpora, tortured in *kuthars*, described seeing their neighbours tortured, and still others barefoot in the snow at night waiting to be tortured. At the same time, the women of the village were raped in their homes, within familiar settings of domesticity. The experiences of the rape survivors, documented by the researchers, highlight the extent to

² Turban: a part of the cultural attire of the Gojar community, often worn by male elders of a village.

³ Ikhwan is a 'counter-insurgency' militia comprising of locals, often surrendered militants, with some arms training, created, armed and managed by the Indian State and the Indian Army. Please see Chapter 1 of this Report for a detailed commentary on this phenomenon.

⁴ Political movement against the Indian State's occupation of Jammu and Kashmir that encompasses a wide-spectrum of resistance ideologies including armed resistance.

which state-sponsored structures of patriarchal violence-embodied in the mass violence perpetrated by the military—are used to amplify local cultures of violence against women.

The spaces in which violence is enacted and inflicted do not exist in a vacuum because every village, town and city in the most militarized zone in the world is inundated by the material structures of militarization. These include structures - both affixed and locomotive - camps, bunkers, pickets, 'stop and search' posts, armored *bakhtarbands*,⁵ 'flying squad' police vehicles, even barricades of barbed wire. Such materials and objects resonant of violence have acquired permanence in memory and a significance that goes beyond the immediate purposes for which they exist.

Interviews with the survivors of mass violence create a portrait of an event from the past, preserved only in small pieces in memory. The survivors recall their own pain and the pain of others they heard or saw; in Kunan Poshpora- Abdul Rahim Dar, a torture survivor, says he heard the cries of women and children during a 15-20 minute walk from his house to a *kuthar* where army personnel then tortured him. In Sopore, Shafaqat Hussain Dar, while hiding with 200 others in a cinema that was later burnt to the ground by the BSF says he heard BSF personnel cry out loud "*Saloon ko pakdo...jo jahan mile mar do*" [Get hold of them, kill them where you find them]. The survivors of mass violence often continue to live in the same spaces where the violence was enacted; some are coerced into maintaining relationships with perpetrators because of how the latter are positioned in the culture of impunity. Yet, every time survivors recall events and times past from their memory, and describe the enactment of the mass violence they experienced, the violence is made 'present'. The spectacular violence of an event delimited in space and time is present in every verbal, textual and visual narrative of the incident, and so is its ability to instill terror.

The massacres at Sailan and Kunan-Poshpora have targeted communities living at the 'borders' of Jammu and Kashmir, as territorially outlined by the Indian State. In Poonch District, the location of the Sailan and Mohra Bachai massacres, the strategic enlistment of the local population and the creation of multiple channels of dependencies result in an institutionalization of disenfranchisement⁶. This is manifest in the position of the Special Police Officer [SPO]- a civilian employed under the Police Act and often used by the army as an informer and recruiter; promises of such 'employment' are also used to counter demands for justice and reparations for crimes perpetrated. As Abdul Rashid, son of Jumma Khan, killed in the Pathribal 'fake encounter' says, "First they target us, then they say we are announcing *bharti*⁷ from this area. They want to tell us, we gave

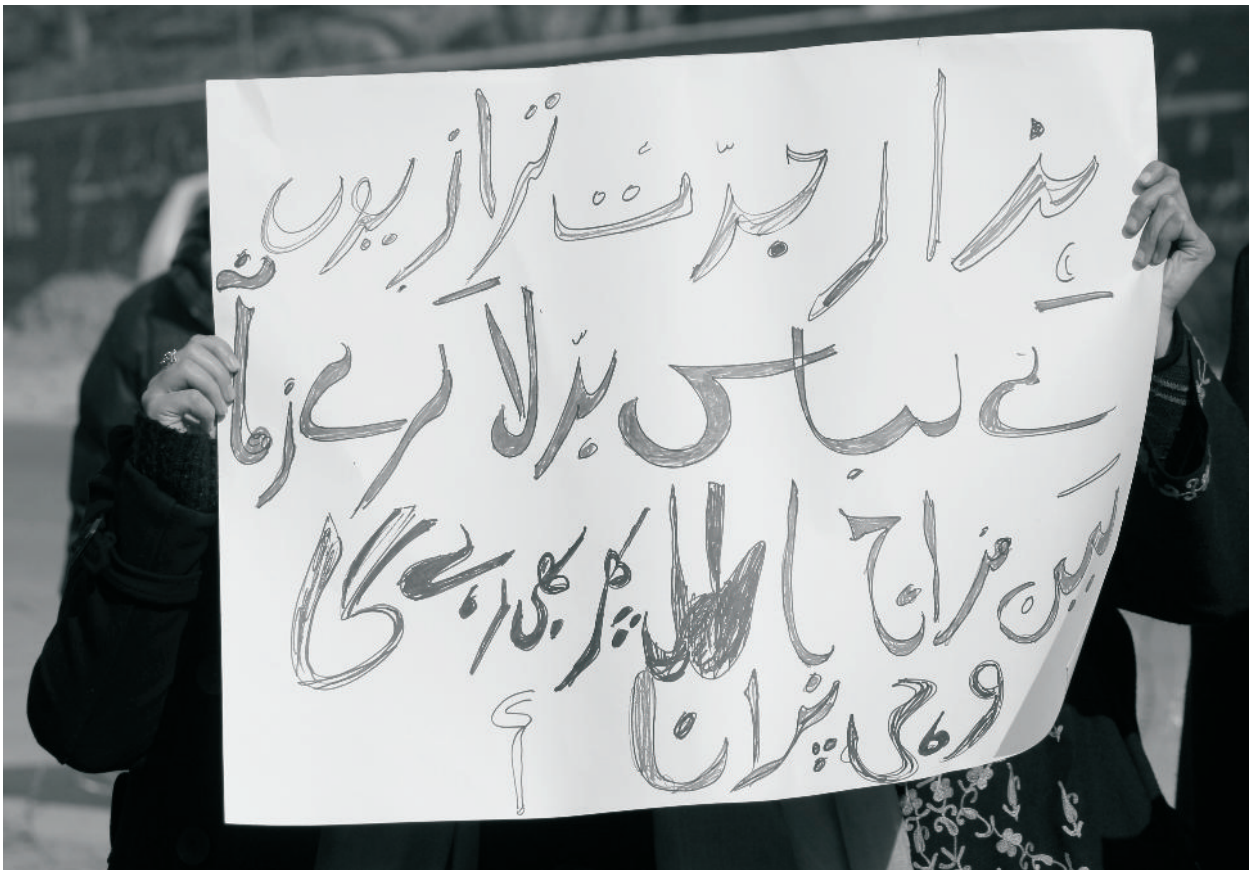
you jobs, *Ab Chup Karo!*" (Now shut up!)

Bio-political arrangements that perform mass violence as spectacle, render those they describe as 'militant'—which includes most Kashmiris—as completely disposable. They determine life, death and everything in between under conditions of violent militarization in Indian Administered Kashmir.

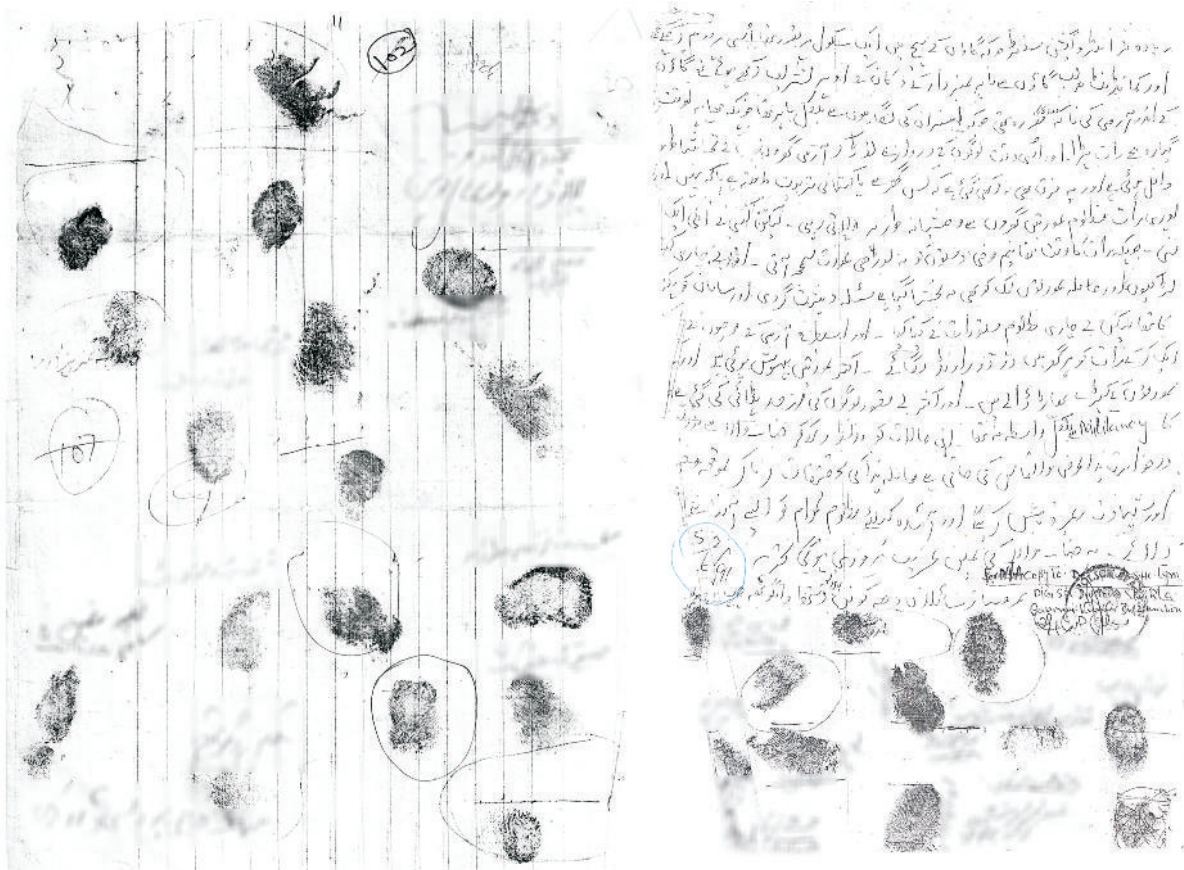
5 Large armored army vehicles, commonly used by military forces involved in 'counter-insurgency'

6 Also see 'The Anatomy of a Massacre-The Mass Killings at Sailan', Jammu Kashmir Coalition of Civil Society, August 2014.

7 Recruitment drives for joining the police or the military.



"Oppressors may wear new clothes but their ways remain the same", says a banner from a protest by a large number of women activists outside Kupwara Sessions Court in December 2013.



Communiqué drafted by villagers on 25/26 of February signed by survivors narrating their experience of mass rape and torture to DC and SP, Kupwara.

A. THE MASS RAPE AND TORTURE AT KUNAN AND POSHPORA, KUPWARA DISTRICT, 1991

TIMELINE

Date	Event
23/24 Feb 1991	Mass Rape of at least 40 women and torture of many men by personnel of 4 Rajputana Rifles, 68 Mountain Brigade in villages of Kunan and Poshpora.
25/26 Feb	Villagers from Kunan and Poshpora write to Deputy Commissioner Kupwara and Superintendent of Police regarding the rape and torture.
26 Feb – 2 Mar	Villagers visit Brigade Headquarters of the 68 Mountain Brigade to register their protest with the perpetrators.
2 Mar	According to the DC Kupwara, he learnt of the incident through villagers who had come to his office.
5 Mar	DC Kupwara conducts a 'spot inquiry' at Kunan Poshpora.
7 Mar	DC writes to Divisional Commissioner, Kashmir and Superintendent of Police, Kupwara with details of his spot inquiry.
8 Mar	First Information Report no. 10/1991 registered at Trehgam Police Station.
15 Mar	First round of Medical Examinations conducted on 19 women all of whom show signs of having been raped.
18 Mar	Divisional Commissioner, Kashmir Wajahat Habibullah visits Kunan-Poshpore; files a confidential report based on this visit.
21 Mar	Second round of Medical Examinations conducted on 14 women all of whom show signs of having been raped.
Jul 1991	Press Council of India team headed by B.G Verghese publishes 'Crisis and Credibility'-a report on the rape allegations at Kunan-Poshpore.
23 Sep	Director, Prosecutions communicates to the Superintendent of Police, Kupwara stating that the Kunan-Poshpore case is "unfit" for prosecution.
21 Oct	Jammu and Kashmir Police closes Kunan and Poshpora case as 'untraced' but does not file the <i>Ikhtitami</i> before the Magistrate as required.
2004-2011	Victims of Rape and Torture at Kunan-Poshpore approach the SHRC in various complaints
16 Oct 2011	SHRC issues a final decision recommending prosecution of accused and those involved in covering up the crime as well as monetary compensation for the victims of rape. 40 women listed as having been raped and therefore to be compensated.
24 May 2012	Mir Saifullah gives victims Rs 39,00,000 and Rs 25,000 as compensation in cash. The victims are led to believe that this payment is as per the SHRC directives. In 2013, following legal consultation, they are briefed that this is not an official payment.
Mar 2013	50 Kashmiri women from a variety of socio-economic backgrounds began the process to file a Public Interest Litigation urging for action on the SHRC judgment, re-investigation and other relief in the Kunan Poshpora Case.
Mar 2013	After 22 years, police in light of the PIL file <i>Ikhtitami</i> before the Magistrate in Kupwara.
20 April 2013	Public Interest Litigation filed before the High Court in Srinagar.
14 May	High Court does not admit PIL, stating that it is 'premature', as the State has recently filed a Closure Report in the case.
14 May	A meeting of the High Level Committee is held to decide the case of compensation of the victims of rape at Kunan Poshpora.
10 Jun	Three survivors of torture and two survivors of rape file a protest petition before the Sub-Judge, Judicial Magistrate, Kupwara against the closure of the case urging further investigations.
13 Jun	Chief Prosecuting Officer- Counsel on behalf of the State opposes protest petition arguing that the petition is motivated by a desire for monetary compensation.
18 Jun	Judicial Magistrate, Kupwara orders further investigations by an SP within a time period of three months.
Jun 2013 - Jan 2015	Investigating Officers of the case regularly seek and are granted, extensions for the investigation, until the investigations are stayed by the High Court in January 2015. No substantive investigations conducted. A contempt petition filed against the Investigating Officer for his inaction in the case is dismissed by the lower court.
18 Oct 2013	Three survivors of torture and two survivors of rape file a petition in the High Court seeking court-monitored investigations by SIT and compensation. This petition is filed because the Investigating Officer is not carrying out any investigations in the case. This petition is subsequently converted into a PIL by the High Court.
12 Nov 2013	Revision Petition before the Sessions Court filed by army challenging order of the Magistrate, Kupwara for further investigation on grounds including that the victims have "no locus standi"
30 Dec 2013	Sessions Judge, Kupwara holds that the victims have a right to be heard and dismisses Revision Petition on 08 August 2014.
1 Jul 2014	The Government informs the High Court in the petition filed by the victims that following a meeting by its empowered committee on 4 July 2013 a decision has been taken on the SHRC recommendations. It has been decided that no compensation can be paid as there was no such policy in place in 1991. High Court directs the government to "explore the possibility" of granting relief.
12 Aug	The Government informs the High Court that "in principal the decision has been taken at highest level for accepting the recommendations of the" SHRC. Time is sought for filing the appropriate government order.
14 Oct	As no compensation has been paid, the High Court directs the Government to pay compensation.
9 Dec	Government challenges directions of the High Court on compensation in the Supreme Court.
20 Dec	Indian army files a petition against the SHRC decision of October 2011. High Court grants a stay.
15 Jan 2015	Indian army files a petition against the Sessions Court dismissal of its revision petition, and the army challenges the lower court order of 18 June 2013 for further investigations. High Court grants a stay on investigations.



Abli Dar, son of Lassi Dar, a torture survivor from Kunan-Poshpora died on 11 June 2013 during the amputation of his leg- a surgery necessitated by the torture he suffered on 23/24 February 1991.

Introduction

During the intervening night of 23 and 24 February 1991, four companies⁸ comprising at least 400 personnel of the 4 Rajputana Rifles, 68 Mountain Brigade, camped in Trehgam⁹, Kupwara, gang-raped at least 40¹⁰ women at gun-point and tortured at least 12 men¹¹ in a 'cordon and search operation' in the twin villages of Kunan and Poshpora.

On the night the forty women were gang-raped, army personnel also trampled a four-day old baby girl under their boots while raping her mother; the baby died after three days due to extensive injuries to her internal

organs. Another baby girl, who was in her mother's arms while her mother unsuccessfully tried to flee the scene was injured in her leg and has been unable to walk normally since¹². One survivor, nine months pregnant at the time she was raped gave birth to a child with a fractured arm five days later¹³. Five rape survivors have died since, at least two of them had continuous vaginal bleeding on account of being raped, which did not stop even with medical treatment, ultimately leading to their death. Many other rape survivors have undergone multiple surgeries, all attributable to the rape they faced. Reportedly, fifteen of the rape survivors have had hysterectomies- surgeries to remove their uteruses.¹⁴ 23 years after the night of rape and torture, Abli Dar, died on 11th June 2014 from medical complications during a surgery he underwent for the amputation of his leg – made necessary because of his torture by the army personnel during the 'cordon and search operation'.

Contextualizing 'Cordon', 'Search' and 'Interrogation' in Kunan-Poshpora

Kunan and Poshpora are located at a distance of less than one hundred meters from each other and are considered a contiguous group of households for all practical purposes. They lie in the Kupwara district of Kashmir, which shares its border with the Line of Control with Pakistan and is the most militarized district in Kashmir. In the villages, the army personnel dragged the men out of their homes to two *kuthars*¹⁵ and the house of Abli Dar-thirty to forty meters from each other- all three were then transformed into temporary torture centres for the night. The army personnel under the command of the Commanding Officer of the 4 Rajputana Rifles, Colonel K.S Dalal, entered the homes of the villagers and gang raped 40 women at gun-point –with as many as ten army personnel raping one woman. While the women targeted in their homes, their male family members were tortured in what were familiar spaces turned into "interrogation centres" through the night¹⁶. The morning following the mass rape and torture Captain Ranjan Mahajan obtained a 'Certificate' on behalf of the villagers signed by the two Head Constables of the Kashmir Police, Abdul Gani and Bashir Ahmad and three villagers attesting to the fact there was "no damage to any property, houses, men or material" and that "no women folk [were] ill treated or molested" during the 'operation'.¹⁷

8 Section 161 statement of Lance Naik Chabil Das, part of the 'cordon and search operation' conducted by Alpha Company of 4 Rajputana Rifles. According to the Code to Criminal Procedure, Jammu and Kashmir, Section 161, police officials investigating the case must take statements of the victims or survivors in all serious cases, including rape.

9 Ikhtitami or Final Report in Kunan-Poshpora filed by Jammu and Kashmir Police in March 2013 and reproduced in the Order of the Court of Sub Judge, Judicial Magistrate Kupwara on 18.06.2013.

10 40 rape survivors have approached the State Human Rights Commission for relief in regard to their rapes on that night. Our research suggests that significantly more than forty women were raped by the personnel of the 4 Rajputana Rifles that night. However, due to societal constraints, these women have been reluctant to come forward. This is also compounded by the fact that the forty women who approached the SHRC have been denied justice so far.

11 The police investigations recorded the statements of 12 men regarding their torture. However our research indicates that the actual number of men who faced torture that night, was significantly higher.

12 Section 161 Statement of Sana, a rape survivor from Kunan Poshpora.

13 Section 161 Statement of Mehak a rape survivor from Kunan Poshpora. Medical Report of baby, Feroz (name changed)

14 Ghosh, Shrimoyee Nandini, 'Kunan-Poshpora: The Other Story', Kafila, 2014, available at <http://kafila.org/2014/01/20/kunan-poshpora-the-other-story-shrimoyee-nandini-ghosh/>

15 Small wood and mud structures used to store grain, grass and livestock, commonplace in villages.

16 Section 161 statement of Captain Ranjan Mahajan, part of the 'cordon and search operation' conducted by 4 Rajputana Rifles. The fact that some buildings in the villages were turned into "interrogation centres" used to "interrogate" the men is not disputed- Section 161 statements of multiple army personnel including Havaldar Tehsildar Singh, 2nd Lieutenant Rajhu Raj, Rfn Ajmer Singh, all part of the 'cordon and search operation' affirm this.

17 'Certificate' issued by Adjutant Captain Ranjan Mahajan on behalf of Commanding Officer, 4 Rajputana Rifles of which our researchers have a copy is dated 01 May 1991. This is a typed-out reproduction of the original 'No Objection Certificate' that the villagers and the constables recall signing in their statements to the Jammu and Kashmir Police. Such a 'certificate' would have little legal value in light of the torture perpetrated on the villagers and the pervasive violence perpetrated on the night of the 23/24 February 1991.

The 'operation' had been "planned" on 23 February 1991 after the 68 Brigade was "informed and clearance [for the 'cordon and search'] was obtained" on basis of information from a "source" in February that "there were militants" in the villages¹⁸ in light of the fact that the village had "a history of sheltering militants"¹⁹. The General Officer Commanding of the Division was also "briefed on how the operation would be carried out"²⁰. Though such 'operations' were frequent, the 'cordon and search operation' on the 23/24 of February was the "first...all night operation" undertaken in the area²¹.

On the 23 February, 1991, the Commanding Officer of the 4 Rajputana Rifles, conducted a "briefing" with the personnel from four companies the 4 Rajputana Rifles during which he delegated two companies-Alpha and Delta- to lay down the "cordon" where as two others-Bravo and Charlie- were put in "charge" of "search and recovery"²². The Alpha, Bravo, Charlie and Delta companies were led by Major Jatarana,²³ Major Hoshiar Singh²⁴, Major Ashok Mathur²⁵ and Major Mahesh Mathur²⁶ respectively, who in turn were "keeping in touch" with the Commanding Officer via "wireless"²⁷ the entire duration of the 'operation' while Colonel K.S Dalal was accompanying the personnel and supervising the 'operation' on the ground while "moving" between the 'cordon' and 'search' parties.²⁸

Also "directed by the Commanding Officer" to "accompany" the 'cordon and search operation' was the Regimental Medical Officer, Captain Shyam

Sunder²⁹. Capt. Shyam Sunder was given an overview of the 'operation' and its structure on the evening of 23 February³⁰. As per the statements of the personnel, each Company was further divided into a certain number of columns; for example Charlie Company "leading" the search was divided into three "columns" headed by the [name illegible]³¹, Naib Subedar Sukhi Ram and Second Lieutenant Raghuraj³².

The companies left their base at the Trehgam Camp at around 9 pm and reached the Trehgam Police Station at 11 pm where Naib Subedar Mool Chand was sent to get "police assistance" from the Station House Officer [SHO], Police Station Trehgam³³. Head Constable's Abdul Gani and Bashir Ahmad, both residents of Kunan-Poshpora accompanied the army personnel on foot from there onwards. Both the police officers left the police station in uniform along with the army after entries were made in concerned registers as part of the protocol of the local police to "assist" the army in such 'operations'.³⁴

At Trehgam, four kilometers from Kunan-Poshpora, the companies "got down from vehicles" and "went by foot" reaching the "periphery" of Kunan-Poshpora at 1 a.m.³⁵ Upon reaching the villages, it then took the army "an hour" to "deploy and link up" their various "columns" following which at around 2 a.m. the Alpha and Delta companies "cordoned off the village" with explicit orders that "no one [be] allowed to move in or out" of the village while "jawns were sent to houses for search". On foot, the army personnel lit the way carrying large battery powered

18 Section 161 statement of [name illegible], part of the 'cordon and search operation' conducted by 4 Rajputana Rifles. Our researchers have access to poorly photocopied versions of the statements. Therefore, certain names are illegible.

19 'Confidential Report of Divisional Commissioner, Kashmir on Incident at Kunan Poshpora, Kupwara.'

20 This shines light on the question of Command Responsibility in the mass rape and torture at Kunan Poshpora. The General Officer Commanding [GOC] is in charge of an entire division of the infantry and represents the highest level of command within it. The 4 Rajputana Rifles, a part of the infantry wing of the Indian Army falls under the Command of the GOC, Dragma Division. There are 7 General Officer's Commanding in the XV Corps of the Indian Army; to read more about army structure and Command Responsibility in Kashmir, see Chapter 1 of this report.

21 Ibid

22 Section 161 statement of Captain Ranjan Mahajan, part of the 'cordon and search operation' conducted by the 4 Rajputana Rifles.

23 Ibid

24 Section 161 statement of [name illegible], part of the 'cordon and search operation' conducted by 4 Rajputana Rifles.

25 Section 161 statement of Havaladar Mansa Ram, part of the 'cordon and search operation' conducted by the 4 Rajputana Rifles.

26 Section 161 statement of Subedar Laxman Singh, part of the 'cordon and search operation' conducted by the 4 Rajputana Rifles.

27 Section 161 statement of Ghan Shyam Singh, part of the 'cordon and search operation' 4 Rajputana Rifles. This is also corroborated in the statements of the survivors of rape to our researchers.

28 Section 161 statement of Major R Khullar, 4 Rajputana Rifles part of the 'cordon and search operation'.

29 Section 161 statement of Captain Shyam Sunder, part of the 'cordon and search operation' conducted by the 4 Rajputana Rifles.

30 Ibid

31 Our researchers have access to poorly photocopied versions of the statements. Therefore, certain names are illegible.

32 Section 161 statement of [name illegible], part of the 'cordon and search operation' conducted by the 4 Rajputana Rifles.

33 Section 161 statement of Captain Ranjan Mahajan, part of the 'cordon and search operation' conducted by the 4 Rajputana Rifles.

34 Section 6, Naga People's Movement versus The Union of India in the Supreme Court of India on 27 November 1997. A 'List of Do's and Dont's' issued by the Army Headquarters was presented by the Attorney General before the Court. According to the Court, "the instructions contained in the said list which must be followed while acting under Armed Forces (Special Powers) Act, 1958 are in these terms:

(a) Act only in the area declared 'Disturbed Area' under Section 3 of the Act.

(b) Power to open fire using force or arrest is to be exercised under this Act only by an officer/JCO/WO and NCO.

(c) Before launching any raid/search, definite information about the activity to be obtained from the local civil authorities.

(d) As far as possible co-opt representative of local civil administration during the raid."

35 While army personnel, in multiple statements, say that they reached the Trehgam Police Station at 11 pm and then reached the Kunan-Poshpora villages at 2 am, this is contradicted by statements of both the victims of torture and of rape who say that they saw the army in the village at around 10:30 or 11 pm. The army version is also contradicted by the statement of Head Constable Abdul Gani, who in his 161 Statement to the police says that he "reached [his] home at Kunan-Poshpora at 11pm."

torches.³⁶ The army personnel were accompanied by a “spotter”, Aziz Ganai, also from Kunan-Poshpora who “showed” the army personnel houses “suspected” of harboring militants- separate individual cordons were set up around these houses³⁷.

Major Ashok Mathur, Naib Subedar Hakikat Rai and Subedar Daya Ram were seen establishing a cordon around two *kuthars* where one Major Mathur and Captain Mahajan “did the interrogations”³⁸. Three such torture centres were established in the village, at the *kuthars* of Abdul Ahad Shah, Asad Dar and the house of Abli Dar, son of Jabbar Dar. The male members of the village were “interrogated” there for the entire night while the army personnel used the spaces to warm themselves and prepare tea³⁹. In addition to the *kuthars* and Abli Dar’s house the army converted a “first floor of school building” in the village into a makeshift “interrogation centre” where they admit at least ten civilians were brought by “search parties” for “interrogation”.⁴⁰

The ‘search’ was called off at 9 am in the morning,⁴¹ following which the villagers were gathered at the Islamia School⁴². Here, the Commanding Officer addressed them, telling them to “to extend cooperation against militants” while asking them if they had incurred “any grievance”⁴³. The Medical Officer, Major Shyam Sunder held an impromptu medical camp in the morning where “locals were asked to bring patients” and Major Shyam Sunder “checked” thirty to forty persons and “gave medicines for simple ailments”⁴⁴. The Commander of 68 Brigade, Brigadier Keshav Singh and the Brigade Major also visited the villages in the morning. At the end of the ‘operation’, the army allegedly found one grenade, one AK-47 and “one person” who said that, “he knew about the grenade kept by his son in the house”⁴⁵. Incidentally, neither recoveries of weapons made by the army during the ‘cordon and search

operation’ were never handed over the police, as is required by law; nor was any “militant”, apprehended.⁴⁶

The next morning, the army “demanded a no objection certificate” from the villagers absolving the army of any “damage or ill treatment” during the ‘cordon and search operation’ which three of the villagers signed⁴⁷. Later, in their statements to the police, the two police constables accompanying the army men said that they had heard “screams of women” and “children crying” in the night⁴⁸. Head Constable Abdul Gani said he went into one of the houses and saw one woman, “naked” and “semi-conscious” and that he found the “same state” in “many houses”⁴⁹. Head Constable Bashir Ahmad says he saw a man “lying on the ground” who was “badly tortured” the next morning⁵⁰. Head Constable, Abdul Gani had been locked by army personnel in a cowshed for some part of the night because he had tried to intervene when the army personnel were raping a woman in the village.⁵¹

A Narrative of the Night of Rape and Torture

The following narrative is constructed from the testimonies of the survivors of rape and torture at Kunan-Poshpora on the 23/24 February, 1991 to Dilbagh Singh of the Indian Police Service as part of the investigation, as well as by the Support Group for Kunan-Poshpora whose Public Interest Litigation filed in the High Court at Srinagar resulted in the *Ikhtitami* (final report) in the case being filed.

Afia, who was raped while at her maternal home in Kunan, having delivered a baby girl four days earlier, was sleeping in the presence of her mother, brother and father when ten or eleven armed and uniformed army personnel wearing helmets, broke the door, barged in, took her father and brother out of her house and raped her and her mother upon coming back. She says,

I had delivered a baby four days back and I was lying

36 This is corroborated in multiple witness statements of both the tortured and rape survivors. Rape survivor Mehnaz’s 161 statement says, “They [the army personnel] had huge battery torches with them and they used them one by one to see my entire naked body.”

37 Section 161 statement of Captain Ranjan Mahajan, part of the ‘cordon and search operation’ conducted by 4 Rajputana Rifles, to Assistant Superintendent of Police, Dilbagh Singh corroborated by Section 161 statement of rape survivor Atiya.

38 Section 161 statement of [name illegible], part of the ‘cordon and search operation’ 4 Rajputana Rifles.

39 Statement of torture survivor Abdul Ahad Dar to our researchers.

40 Captain Ranjan Mahajan of the 4 Rajputana Rifles, in his 161 Statement to the police, makes a reference to a school building used for “interrogation”. This is corroborated, in part, by the 161 statement of constable Abdul Gani, who says that he “found people had been taken to the building”. However, in the 161 Statements of the victims of torture victims, Aziz Shah and Ghulam Rasool, “the villagers were asked to assemble at the Islamia School” at 6am in the morning where the Commanding Officer of the 4 Rajputana Rifles addressed the villagers.

41 Section 161 statement of Major Mahesh Mathur, part of the ‘cordon and search operation’ conducted by 4 Rajputana Rifles.

42 This is contradicted by the 161 statements of the survivors to the police in which they say the villagers were assembled in the Islamia School at 6am.

43 Ibid

44 Section 161 statement of Captain Shyam Sunder, part of the ‘cordon and search operation’ conducted by 4 Rajputana Rifles.

45 Section 161 statement of [name illegible], part of the ‘cordon and search operation’ conducted by 4 Rajputana Rifles.

46 Section 6, Armed Forces [Jammu and Kashmir] Special Powers Act, 1990 [AFSPA] “Any person arrested and taken into custody under this Act and every property, arms, ammunition or explosive substance or any vehicle or vessel seized under this Act, shall be made over to the officer-in-charge of the nearest police station with the least possible delay...[emphasis added]”

47 Section 161 statement of Head Constable Abdul Gani, part of the ‘cordon and search operation’ 4 Rajputana Rifles.

48 Ibid

49 Ibid

50 Section 161 statement of Head Constable Bashir Ahmad, part of the ‘cordon and search operation’ 4 Rajputana Rifles.

51 According to the statement of Abli Dar, son of Lassi Dar to our researchers.

on the bed with my baby on my side. The baby was trampled by the boots of the army men. The baby cried and I screamed for help... two army men caught hold of my arms and two caught hold of my legs. They tore my clothes (frock and pyjama)... Some of the army men grabbed my mother's arm and dragged her to another corner of the room, tore her clothes and raped her. They put a cloth on my mouth so that I would not scream. Then five to eight army men raped me one after another.... The baby had died three days after the incident as she had severe damage in her internal organs.

Abdul Ahad Dar, a torture survivor from Kunan-Poshpora, says that the army arrived at around 11 or 12:00 at night, they kicked the door and then broke it open. When Abdul Ahad put on the light, went to the door and opened it fully around 18 or 20 army personnel came inside. They were all uniformed, armed and were carrying torches. Then the army officer leading the group asked him, "Where is Gania?" inquiring of the whereabouts of his nephew, Abdul Gani Dar. When Abdul Gani Dar arrived, the officer asked the two to "show them the militants". Following this, he was taken to Abdul Ahad Shah's *kuthar* while his nephew was taken to Asad Dar's *kuthar*. Lined outside the *kuthars* he saw fifty odd men, young and old, standing barefoot in the snow, waiting in queue to be tortured.

The *kuthar* Abdul Ahad Dar was brought to was about 15 by 12 feet; in the room he saw an electric circuit on the side, a plank of wood and a bucket filled with water containing red chili powder. The army personnel sat him down on the plank of wood and began torturing him. They began the torture session by asking him for weapons, to which he responded that he had none and that neither he nor his son had been to Pakistan. Then, the army personnel promised him money in return for weapons. After that, he says, "they made me lie down, tied my hands, three-four people sat on my legs, and put my head into the bucket and made me drink the chilli water, and from below they gave me electric shocks at my feet with a DC circuit.... the interrogation was for about an hour and after that I fainted". When Abdul Ahad regained consciousness, he found he had been thrown out of the *kuthar* but that it was still night so he hid himself in a nearby shed until the sun rose. At around 9 in the morning, he headed home, though the army personnel were still in the village. Later, he came to know that his nephew, Abdul Gani Dar had been tortured and thrown by the side of a drain outside the village.

Mehak, a rape survivor says that after the male family members were taken away, three army men in uniform with helmets and carrying weapons barged into her room. They kicked her toddler son repeatedly and pushed him to one side of the room. After that the army men took out a bottle of alcohol and drank it; broke the electric lamp and then proceeded to rape her. She says, "the army men used their torches for light. They were putting light on the face and also on the naked body. Ehtisham [her son] was crying and shouting for help... they tore off my frock and shalwar. When I tried to resist two men held me by my arms and then third one raped me and all three of them raped

me one after one."

Abli Dar, son of Lassi Dar who was tortured at the house of another Abli Dar, son of Jabbar Dar, was also asked where "militants" were hiding in the village. He says he pleaded his innocence and replied there were no militants in their village and that he had no information about any militant. Describing the space where he was tortured, he says,

The army men were inside the bedroom [of Abli Dar, son of Jabbar Dar's house]. There were about 15 army personnel inside this bedroom sized 10 feet by 12 feet. They had lit fire in the center of the room and were preparing tea for themselves. It was a small fire, which was set up on the mud floor... They removed my shirt and laid me down on the plank facing the floor. Then about 4-5 army personnel got on my back along with their boots, then pressed down my legs, lower back and upper back. Then some men pushed my head down into the bucket of chilly water. On the initial attempt of dipping my head into chilly water when I felt suffocated I turned my body on the left and pushed a bit. The army men sitting on my back fell down on the floor. They got angry and shouted "Salay Pehalwan lagta Hai" (You seem to be a strong-man). Then they brought a rope and tied my arms on my back and also tied my ankles. Then, they again laid me down on the plank facing down. Then they brought three thick planks, which were about 4 feet long and 10 inches thick. They kept one plank on my upper back, second on lower back and third on the back of thighs. Then army men got over all the three planks, clutched my body and again my head was repeatedly dipped into the bucket of chilly water. The thick wood planks were kept on my back for half an hour and they continued to dip my head into the water. The thick wood planks damaged my legs, back and chest. The army repeatedly asked me for information about militants but I pleaded with them about not having any such information.

Abli Dar was carried home in the morning by his brother-in-law after he was rendered unconscious by a heavy blow to the chest during his torture in a nearby stream.

Abdul Rahim Dar, a torture survivor, went out of the house at around 10:30 pm to urinate and found a group of army personnel, around 10-11 in number, who called him and asked him whether there were any militants in his house. Following this, some army personnel entered his house and took him to Asad Dar's *kuthar*, a 15-20 minute walk in the heavy snow on the ground that night. On the way to the *kuthar*, he heard women's cries emanating from the houses nearby. He says,

The army personnel took me inside the kuthar where I found around 10-12 army personnel. As soon as I was taken inside they forcibly removed my clothes except my undergarment. After removing my clothes they asked me to give information about the number of militants in the village and location they were hiding in. I pleaded my innocence and said that I had no information about any militants in the village... Then they took me and first dipped my head into chilly water and asked me to provide information about militants. I repeatedly pleaded that I have no information about

any militant. They repeatedly dipped my head into the chilly water for more than half an hour. On every dip they were holding me for 5-10 seconds. Every time when my head was dipped into the water, they were giving me electric currents on my ear lobes, on the back and on my toes. During this process one of the army personnel who was torturing me kicked me on the hip and said to me in Hindi "Salay Abi Time Hai Batao Warna Marna Ha" (speak you still have time otherwise you have to die). I felt severe pain due to kicking and replied to the army man in Hindi "Salay Hum to Mar Gaye Ab Jhoot Kya Bholaingay?" (We have already died, why should we lie?) On replying angrily to the army man he removed my undergarment and then inserted a needle into my penis and gave repeated electric currents for about 20 minutes to my penis and testicles, which rendered me sexually dysfunctional afterwards.

Rape survivor, Sana, says that five army men wearing helmets entered her room and after smashing the electric bulb that she had put on earlier, proceeded to rape her. She says, *I got scared and I carried my youngest daughter, Poshha, into my lap and tried to run out of my room, but two army personnel caught hold of me by arms, due to which Poshha fell down from my lap and got injured. My children who were in the room started crying. Then three army men pushed me down on the floor, tore off my clothes and raped me one after another in the presence of my children. When my children cried and raised alarm the army men aimed guns at them and threatened to shoot them if they did not stop crying. When I screamed and cried for help, the army personnel stifled my mouth with their hands. I heard reverberation of cries and shrieks all around. ...after raping me, the army troopers left...My daughter Poshha has become crippled and could never walk.*

The army personnel raped the women at Kunan-Pora until around 3 am at night⁵² where as the men continued to be tortured until the early hours of the morning.⁵³ Many of the survivors of rape say that the when the children started to cry, the army men started to beat them; that they were coerced to "*Chup Karo*" [Keep Quiet] while guns were pointed at them⁵⁴. They also say the army men entered the houses with the intention to rape them because the army personnel had the zips of their pants open when they entered the houses. At least two of the survivors said, in their statements to the police, said that the army men told them they had been "allowed to rape" by their officers.⁵⁵ From the testimonies of the victims of torture, it emerges that the army personnel were in communication with their officers right from the

beginning to the end of the 'cordon and search' operation via wireless; survivors note the use of phrases saying "Yes Sir", "Haan Sir" (Yes Sir), "Theek Hai Sir" (Okay Sir)⁵⁶

The Aftermath of Mass Violence-The 'Cordon' Continues

For two days after the mass rape and torture there was a cordon outside the village by army personnel, due to which the villagers were prevented from reporting the crime and seeking much needed medical attention.⁵⁷ During these two days when many of the rape survivors were "bleeding profusely", the only medical attention they were able to receive was from a local 'compounder' who owned a medical shop and gave them "some tablets"⁵⁸. Torture survivor, Abdul Rahim Dar, says he "beseeched" the army personnel who had established the cordon on the periphery of the village, (who were not the same personnel involved in the search or interrogation) that he had "severe pain and multiple injuries" but the army personnel asked him in Hindi "*Kya kisi nay maara ya peeta hai apko?*" (Has someone beaten you?) Incidentally, the officer who had tortured Abdul Rahim Dar had threatened him as the morning dawned, to not reveal anything about the torture to anyone or "they would kill" him. Due to fear, he was unable to say yes or no when questioned. Army personnel did not allow him to go to Kupwara town, the location of the nearest hospital.

On 25/26 February 1991, Jumma Sheikh the village chowkidar and others drafted a detailed communiqué which they got thumb printed and signed by over thirty of the survivors of mass rape and torture in the village. This communication addressed to the Deputy Commissioner [DC] and the Senior Superintendent of Police [SSP], Kupwara, describes how, in the intervening night of 23 and 24 February, army personnel perpetrated "*zinnah bin jabr*" [Forced Intercourse]⁵⁹ on women, targeted without discrimination to their age, while the men while were taken away and tortured; and that all this was fronted as an "operation" to nab "militants"⁶⁰.

The DC Kupwara, S.M Yasin Andrabi, took the letter on official record on the 4th of March, almost a week after it was written⁶¹. Despite repeated trips by the villagers to the Army Camp at Trehgam and to the police station, the DC claims that he had "not known" about the mass violence at Kunan Poshpora until 2nd March 1991 when "he came to know through visitors in his office". On 5th March 1991, the DC conducted a "spot visit" at Kunan-Poshpora during which he took

52 Statements of rape survivors, Sana and Haniya, to our researchers.

53 Statement of torture survivor, Abli Dar, son of Lassi Dar to our researchers.

54 Statements of rape survivors, Sana and Haniya, to our researchers.

55 Section 161 Statement of rape survivor Sana.

56 Statement of survivor torture survivor, Abdul Rahim Dar, to our researchers.

57 Section 161 Statement of Haniya, a rape survivor.

58 Statement of survivor Abdul Rahim Dar, a torture survivor, to our researchers.

59 Communication dated 25, 26 of February prepared by thirty villagers of Kunan-Poshpora addressed to the DC and SP, Kupwara.

60 Ibid

61 The DC, Kupwara does not explain the reason for this delay in taking the communiqué on official record but says that he received written communication from the villagers regarding the mass rape and torture in Kunan Poshpora only on March 4, 1991 though he had come to know about the incident on March 2, 1991.

"the statements of the villagers including some ladies"; was shown "the rooms which were used for gang-raping", "clothes which were torn by the Army" and "empty bottles of wine" which the army had consumed.⁶² He found that the "armed forces had turned violent and behaved like beasts" and concluded a report saying, "I am satisfied that a *prima facie* case of molestation and manhandling as well as rape is made out"⁶³.

This "spot inquiry" of the DC, Kupwara formed the basis of a confidential report sent to the Divisional Commissioner, Kashmir, Wajahat Habibullah at Srinagar on March 7. Copies of the report were sent to Director General of Police [DGP], Deputy Inspector General [DIG] of Police, Srinagar, Special Commissioner Baramulla, DIG of Police Baramulla Range and SP Kupwara, urging them to conduct an inquiry in light of the "adverse effect" such an event may have on governance. It was on 8 March 1991 that the confidential report sent by S.M. Yasin to Wajahat Habibullah was finally used to file a First Information Report [FIR] no 10/1991 under sections 376 [Rape], 452 [trespassing, assault, wrongful restraint] and 342 [wrongful confinement] of the Ranbir Penal Code [RPC] at the Police Station at Trehgam⁶⁴.

The Army, in an effort to deny the mass rape and torture had taken place during the 'search and cordon', delegated Brigadier H.K. Sharma, Commander, 19 Artillery Brigade, to conduct its own inquiry. Brigadier Sharma visited the village on 10 March and he spoke to headman, Abdul Aziz Shah and the rape survivors.⁶⁵ This report, also confidential, states that while a 'cordon and search operation' was carried out in Kunan-Poshpora by "approx. 160 or more" personnel of the 4 Rajputana Rifles, in light of "certain info regarding suspected ANE's [Anti-National Elements] hiding in some houses"; that all "male members" were assembled separately where their "questioning...was carried out"⁶⁶. The Brigadier concluded the report saying "the charges [of rape] are baseless, unfounded, mischievous and motivated" and were being leveled to "defame the army" and "prevent inconvenience"⁶⁷. Apparently, the Brigadier arrived at this conclusion based on the facts that "the first one" [to give her compliant to the Brigadier] was the "abandoned wife of a mad person whose whereabouts are not known" and that while making their complaints, the "ladies were giggling". Later he states he does not believe the women because they "could not have shown" the "confidence" they did in seeking "treatment", if the "atrocities" had indeed been committed. The report

reads,

*On being specifically asked, if there was any misbehaviour with or molestation of the women, the Headman passed the word around and about 30 women were collected to state their complaints. Most of the ladies were between 40 to 50 yrs of age and some were in their thirties. These women were segregated and asked to explain their complaints away from the menfolk, in the presence of Police personnel, Village Headman and the School Teacher [all men]. Thirteen women came out with information that they had been raped. First two ladies stated that two to three persons had committed rape. The later complainants increased the No to 6-8 personnel assaulting one lady. The alleged misconduct took place around mid night and as per women the persons (sic) stayed in the house for one to two hours.*⁶⁸

On 18 March 1991, the Divisional Commissioner, Kashmir, Wajahat Habibullah, visited the villages of Kunan and Poshpora, in the company of Lieutenant Colonel Naeem Farooqi and Commandant 76 Battalion BSF, Tyagi. The Divisional Commissioner subsequently submitted a confidential report to the Government of India that was later leaked into the press⁶⁹. This report begins by noting that,

The news of the alleged offence had attracted strong adverse comment from the local and national press and denials issued had failed to carry conviction. After discussion with the DGP and Corps Commander therefore it was decided that the undersigned might visit the village and also talk with concerned army officers to determine the course of action required to be followed to allay doubts and restore confidence.

While the Divisional Commissioner affirms, in the last line of the report, that "operation [referring to the 'cordon and search operation'] has not been specially productive in terms of recoveries", his report parrots the position of the Army report maintaining that "the allegation of mass rape cannot be sustained" on the basis that "it is impossible to believe that officers of a force such as the Indian Army would lead their men into a village with the sole aim of violating its women." He contends the allegations were made under "militant pressure" with the sole aim to "discredit the army". The report recommended "safe guards" to "prevent complaints that ...sully the fair name of the country" and help "refurbish the image" of the army.⁷⁰ Subsequent to the report of Wajahat Habibullah, The Press Council of India was tasked with investigating, at the request of the Indian Army, specifically the

62 Section 161 Statement of DC, Kupwara S.M Yasin Andrabi.

63 Section 161 Statement of DC, Kupwara S.M Yasin Andrabi.

64 This letter was leaked to the Press following which Journalists began to report on the Kunan- Poshpora mass rape

65 'Confidential Investigation Report on Incident dated 23/24 Feb in Village Kunan and Poshpora' by Brigadier HK Sharma, Commander, 19 Artillery Brigade.

66 Ibid

67 Ibid

68 Confidential Investigation Report on Incident dated 23/24 Feb in Village Kunan and Poshpora' by Brigadier HK Sharma, Commander, 19 Artillery Brigade.

69 'Confidential Report of Divisional Commissioner, Kashmir on incident at Kunan Poshpora, Kupwara'

70 'Confidential Report of Divisional Commissioner, Kashmir on incident at Kunan Poshpora, Kupwara'

Kunan-Poshpora rape case⁷¹. The Press Council deputed B.G. Verghese to head a three-member team to “investigate” the “allegations of rape at Kunan and Poshpora. The team dismissed all allegations and termed the mass rape and torture, “a massive hoax... orchestrated by militant groups and their sympathizers and mentors in Kashmir and abroad as part of a sustained and cleverly contrived strategy of psychological warfare and as an entry point for re-inscribing Kashmir on an international agenda as a human rights issue.” The report of the Press Council of India also claimed loose ends and contradictions in the story exposed what was “a web of lies by many persons sustained at many levels.” The report referred to the rape survivors as “grimy ladies” from “militant infested areas” who were “quite aggressive in defending their men, beating their breasts, tearing their clothes...”. It also dismissed the reports of the Block Medical Officer, Kralpora, who conducted medical examinations of the women as part of police investigations, as “worthless”⁷². The medical examiners findings of “abrasions”, “lacerations” on the women’s bodies and private parts were derided as “likely to be common among village folks in Kashmir as they hug *kangris*.”⁷³

Police Investigations and Pursuance of Legal Remedies

Following the filing of the FIR, the Jammu and Kashmir Police began investigations. Five different investigation teams were constituted one after another to carry out the investigations. Investigations began with local Investigating Officer Lal Mir conducting the *Naksha Moka Nazri* or spot inspections, preparing injury memos, seizing evidence such as torn clothes, alcohol bottles and obtaining a medical opinion. This was followed by the deputation of the Station House Officer [SHO], Assistant Sub-Inspector [ASI] Farooq Shah who recorded Section 161 statements of the victims-both men and women and collected further evidence.

The *Ikhtitami* or Final Report of Jammu and Kashmir Police records that the investigations were nearing completion with “offense under section 376 [rape] of the Ranbir Penal Code [RPC] ...*prima facie proved*” [emphasis added]. He noted that at this point, only the “identification” and “arrest” of the perpetrators was to be carried out. However, at this late stage in the investigations, on 22 of March 1991, the DGP called for “fresh investigations” and deputed Dilbagh Singh of the Indian Police Service to constitute a Special

Investigative Team [SIT]⁷⁴. At the behest of this team, the army submitted a ‘nominal roll’ of 125 personnel of the 4th Rajputana Rifles involved in the ‘cordon and search operation’ in Kunan-Poshpora that night, and recorded statements of the Army men who at this juncture stated, for the first time, that unlawful arms had been recovered during the ‘operation’. The Army also submitted the No Objection Certificate, which the Police Constables who signed it subsequently alleged been produced under coercion⁷⁵. The police in its investigations recorded the statements of 17 army personnel and 2 Police Constables who were all part of the ‘cordon and search operation’. They also recorded the statements of several crucial witnesses-- 12 men, all victims of torture and 22 women, all victims of rape, the Block Medical Officer, Kralpora who had examined the women and written their Medical Examination Performas, as well as the DC Kupwara, S.M Yasin Andarbi.

A Medical examination was conducted on 33 women on 15 and 21 March 1991 confirming the rape of all 33 women examined, including three minors. The Medical reports state that bodies of the women showed “resolving lacerations on the vaginal walls” as well as “marks of violence”, “contusions” and “multiple abrasions” on the thighs, abdomen, chest and buttocks. The medical reports state that all the women stated they had been raped, multiple times while recording their medical history. In communication with Jammu and Kashmir Police, the Block Medical Officer [BMO] writes, “normal intercourse is with the consent of both parties, but intercourse during rape...is against the consent of the passive partner” adding in a subsequent communication that there are “more chances of injury in a case of rape”⁷⁶. There were also several medical reports of injuries caused to the male victims of torture, including one which records “burn marks” on the penis of one of the male victims⁷⁷.

Meanwhile, despite the overwhelming legal evidence (including eye witness statements and medical records), on 23 September 1991, the Director, Prosecutions informed the Superintendent of Police, Kupwara via confidential communication that the case was “un-fit for launching criminal prosecution”. The Director, Prosecutions, in a half-page letter, stated that the statements of witnesses suffered from “serious discrepancies” while the delay in reporting the case raised doubts about veracity. This coupled with the lack of identification of the accused—a “fatal and incurable” lacuna in the case—lead him to

71 A Committee of the Press Council was formed on 14 December 1990 to look at Punjab and was later tasked with “investigating” Kunan-Poshpora. As per Google, B.G Verghese has been a member of the National Integration Council, National Security Advisory Board, Kargil Review Committee and Advisory Board of Security Watch India. He has also served as Information Consultant to the Ministry of Defense. Lancer, which published the PCI Report was established by a former Captain of India’s Armored Corps. It also used to publish the Indian Defence Review.

72 Verghese, B.G.1991. ‘Crisis and Credibility’, Lancer Paper 4: Report of the Press Council of India. New Delhi

73 Portable earthen pots used to light coals to keep warm in the winter.

74 *Ikhtitami* or Final Report in Kunan Poshpora case filed by Jammu and Kashmir Police in October 1991 as reproduced in the Order of the Court of Sub Judge, Judicial Magistrate Kupwara on 18.06.2013.

75 Section 161 statement of Head Constable Abdul Gani, part of the ‘cordon and search operation’ 4 Rajputana Rifles.

76 Communication dated 29th of August, 1991 between the Block Medical Officer, Kralapora, Kupwara to the Superintendent of Police, Trehgam Police Station, Kupwara.

77 Final Report in Kunan Poshpora case filed by Jammu and Kashmir Police in October 1991

conclude that the “incident had been stage managed”. The police “in light of this letter” closed the investigation⁷⁸. In 2013, after 22 years, in response to a Right to Information [RTI] Application filed by our researchers it emerged that on 12 October 1991, the case was “closed as untraced” by the police.

In 2004, one of the rape survivors and another person from Kunan-Poshpora approached the Jammu Kashmir State Human Rights Commission [SHRC] seeking reparations and proper investigations was joined by other survivors who approached the SHRC in the following years. During SHRC proceedings, the Commission chaired by Justice Bashir-ud-din sought reports from the Director General of Police [DGP]. The DGP in turn informed the commission in 2010 that it had been “affirmed” in the *Iktitami* (final report) prepared by the Jammu and Kashmir Police 19 years earlier that in the intervening night of 23/24 February, 1991 “Army Battalion of the 4th Raj Rifles, 68 Mountain Bridge....cordoned the vilage at 11 o'clock [at] night and intruded forcibly into the residential houses, took men into their custody....and on gun point committed gang rape upon 23 ladies...and continued the rape till 24th of February 1991 upto 9 am”⁷⁹. During the SHRC investigations, the DGP upheld the medical reports of the female victims stating that they “had proved to the extent of torture and rape to be correct”. However, the DGP said that the case was closed as “untraced” as “no identification parade” of army personnel was conducted.

After taking into account the testimonies of villagers from Kunan-Poshpora and their medical reports, the SHRC opined that personnel of the 4 Rajputana Rifles in Kunan-Poshpora had raped 40 women on 23/24 February 1991. Underlining that not a single “Anti-National Element was apprehended” in the village, the SHRC concluded that ‘search and cordon operation’ was a “predetermined” crime, planned with the intention to rape women-masked as an ‘operation’ to apprehend “militants”⁸⁰. The SHRC noted that investigations had been “hijacked halfway in order to favor of the perpetrators of the crime”. It also recommended criminal prosecution of the Director, Prosecutions at the time for his role in scuttling the investigative process, and enabling the continuing impunity for the perpetrators. Most importantly, the SHRC recommended the re-opening and re-investigation of the case through a time-bound SIT headed by an officer not below the rank of a Senior

Superintendent of Police and minimum reparations of Rupees 200,000 to every victim of rape.

Meanwhile, in March 2013, in the light of the public protest and media attention on the gang rape of a medical student in New Delhi, who died some days after being gang-raped, in what came to be known as the *Nirbhahya* rape case, 50 women petitioners initiated a process of consultations that was to culminate in the filing of a Public Interest Litigation [PIL] before the High Court, Jammu and Kashmir, Srinagar bench⁸¹. While the PIL was being drafted and filed, Jammu and Kashmir Police, on coming to know of the intention of civil society to approach the High Court through media reports, sought to subvert the process and in March 2013 filed a closure report before the Court of Sub-Judge, Judicial Magistrate, Kupwara of its own accord after a lapse of 22 years. In response 5 of the victims from Kunan-Poshpora- 2 women and 3 men-all victims of gang rape and torture- filed a protest petition against the closure report filed by the Jammu and Kashmir Police in the Court of the Sub-Judge, Judicial Magistrate, Kupwara⁸². It was submitted that the investigations by the Jammu and Kashmir Police were incomplete and clearly affected by *mala fides*, and that delayed investigations had resulted in the violation of the victim's fundamental rights making it imperative for the court to order further investigations.⁸³

In response to the protest petition, the Government, through Chief Prosecuting Officer [CPO], Kupwara, opposed the protest petition⁸⁴. Further, the CPO cast aspersions on the victims arguing that the petition was an attempt by the petitioners to gain monetary compensation. The submission of the CPO states: “Under the garb of said recommendation of SHRC, the de-facto complainants are being advised to prefer protest petitions, so that the recommendations of SHRC could be made applicable to others also”. Further, “That after a gap of 22 years, the de-facto complainants have awakened from the sleep and have smartly tried to get this Hon'ble Court convinced, that they were having no knowledge and have recently known about the closure report...”. However, the Judicial Magistrate dismissed these arguments, found in favor of the survivors and ordered further investigations. Despite court-ordered investigations, from June 2013 [when further investigations were ordered] all the way until January 2015, when the High Court stayed investigations following an Army petition [after a Sessions Court had dismissed their challenge on investigations], the police officers investigating

78 *Iktitami* or Final Report in Kunan Poshpora prepared by Jammu and Kashmir Police in October 1991 as reproduced in the Order of the Court of Sub Judge, Judicial Magistrate Kupwara on 18.06.2013.

79 Jammu and Kashmir State Human Rights Commission, decision dated 16 October 2011.

80 Jammu and Kashmir State Human Rights Commission, decision dated 16 October 2011.

81 On 20 April 2013, the PIL was filed formally.

82 In the Court of the Sub-Judge, Kupwara Jammu and Kashmir, Srinagar in the case of Abdul Ahad Shah and others versus the Union of India and others filed on 10th June 2013.

83 The petition urged the court to order further Investigations under Section 173 (8) Code of Criminal Procedure, Jammu and Kashmir by an SIT, headed by an officer above the rank of SSP, to carry out comprehensive investigations in the instant case and complete investigations within a period of three months from constitution as well as a to ensure that the victims of Kunan and Poshpora are provided all necessary relief/compensation as per relevant rules/SHRC recommendations.

84 CPO of the Jammu and Kashmir Government opposed the protest petition on 13 June 2013.

consistently sought extensions and carried out virtually no investigations. Except for a few communications the police have sought to delay investigations; not a single Section 164-A statement of the victims, mandated by law, has been taken⁸⁵.

Until the Indian Army got a stay on investigations in the High Court [and the SHRC decision itself], Government of Jammu and Kashmir stalled and delayed proceedings in the High Court, which the victim had approached in October 2013 seeking court-monitored investigations. On 12 August 2014 the government stated before the High Court, that, "in principle the decision has been taken at highest level for accepting the recommendations of the SHRC." But, on 11 November 2014 the government, in an absurd U-turn, stated that "the competent authority had not approved the payment of compensation". Therefore, the directions on compensation were challenged in the Supreme Court where the petition is pending before the Registry. The victims will file their responses and stress on the need for criminal investigations in addition to compensation.

Rape and Torture as 'Cordon and Search'- A Critique

The mass violence at Kunan Poshpora is not an isolated incident; the gang rape and torture perpetrated on the women and men from the village must be understood as inherent to the fabric of 'counter-insurgency operations' in which premeditated and planned sexual violence and torture are employed to mark not only the bodies of "militants", but their family members, neighbours and relatives. Such marking extends to "suspected" spaces - houses, *kuthars*, schools in which they are "suspected" to lived, or which form an important aspect of their everyday lives.

In all narratives of that night in Kunan-Poshpura, doors are smashed, electric lamps broken and household supplies vandalized and rendered unusable. The male members of the village are separated from the women and taken to *kuthars*. At the same time, *kuthars*, otherwise used to store grain, are converted into torture centres where conceptions of ownership of space and property are inverted in favour of the perpetrator, as male residents are tortured, water boarded, electrocuted and roller-treated with scientific rigor-often with household items appropriated from the space violently occupied. For example chilli powder, a common spice consumed in every household, is mixed with water and transformed into an instrument of mass torture. In these "interrogation centres", to quote a torture survivor one "hit on the hand with a *lath*" equals a "broken wrist" making a cripple of the "*pehelwan*" of the village in the span of a few hours.

The young girls and women, isolated in their own homes are repeatedly raped by as many as ten army

personnel, many a time in front of their children and family members. A rape survivor whose daughter was also raped in the same room as her says that her daughter's vagina was "completely damaged"-perhaps an indication of how well the perpetrators understand the damning power of patriarchal conceptions of "damage" to women's bodies, while deliberately scarring the gendered bodies of women - their breasts, thighs, buttocks and vaginas within settings of domesticity. Male torture too is similarly sexualized, with many of those who survive the torture suffering from sexual dysfunction for the rest of their lives due to the violence inflicted on their genitals. Many of the women raped that night suffer from poor reproductive health and have had difficulty conceiving. Others have suffered miscarriages while pregnant. One rape survivor, who quietly bled for 15 years, underwent an operation to remove a part of her intestine infected on account of being anally raped-something she kept hidden for years. - All this adds up to agonizing mental trauma and depression.⁸⁶

In public memory, Kunan Poshpora remains a case of mass rape-the story of the torture of men that accompanied the rape is made distant, pointing to how torture is rendered banal, yet remains significant as a 'counter-insurgency' tactic. The women of Kunan-Poshpura have sought justice and resisted the multifarious attempts of the state to obliterate the truth of the mass violence perpetrated by the army whether through casting of aspersions on the survivors' characters, doubting their motivations in pursuing the legal process, or subjecting them to intensive scrutiny and reading even their nervous laughter, as proof of their falsity, as in the Brigadier's Confidential report⁸⁷. Though reflective of the patriarchal nature of state discourse, such attempts at subversion and manipulation of the legal process inadvertently help foreground the truth of mass rape of women in Kunan-Poshpura.

The communication of 23 September 1991 from the Director, Prosecution to the Superintendent of Police, Kupwara illustrates this vividly. One of the reasons provided, as justification for closure of the case was that the victims had been unable to identify the accused. The Director, Prosecutions, sought to place the blame of lack of identification of the accused upon the victims, when in fact, no identification parade was held by the Police as Army authorities refused and continue to refuse to co operate. Moreover, the lack of an identification parade cannot result in the closure of investigations as more than sufficient other evidence had already been collected to charge the accused. Further, this communication considers the delay in filing of FIR [legally irrelevant in rape cases] to be proof of the falsity of the claims of the victims though the victims have stated in their submissions before the lower court, Kupwara that the army had cordoned off the villages for two days following the mass violence,

85 According to the Jammu Kashmir Code of Criminal Procedure [CrPc] Section 164-A Statements of "material witnesses" must be recorded by the Investigating Officer in all serious cases, including rape cases, before a Judge. By virtue of being recorded before a Judge, they are deemed to have greater evidentiary value.

86 Statement of Aafreen to our researchers.

87 See also, Ghosh, Shrimoyee Nandini-The Kunan Poshpora Mass Rape Case: Notes from a Hearing, Warscapes 10 May 2014, available at <http://www.warscapes.com/reportage/kunan-poshpura-mass-rape-case-notes-hearing>

and their communiqué dated the day after the incident was not taken on record by district authorities, until a week later.

What happened in Kunan-Poshpora in the intervening night of 23rd and 24th February 1991 is quite clear – statements of the survivors of torture and rape are on record, along with statements from the army personnel confirming that a 'search and cordon operation' was launched at the villages, and 'interrogation centres' were established. While, individual army personnel acknowledge the deployment of 4 companies of the 4 Rajputana Rifles in the 'cordon and search operation' in Kunan-Poshpora that night, the Adjutant 4 Rajputana Rifles, Captain Rajesh Sharma, on behalf of the Commanding Officer, provided a "nominal roll" naming only 125 personnel as having been employed in 'cordon and search operation' in communication with the Jammu and Kashmir Police tasked with investigation of the case⁸⁸. Further, statements of witnesses – victims and army officers, already place certain personnel at a spot where crime took place, for example: Major Khullar is named at the "interrogation centre"; and the statement of Captain Raghuraj Singh states that Major A. Mathur and Captain R. Mahajan were responsible for the "interrogation".

The SHRC, in its order, stated that "though the DGP has tried to push the collective crime committed by Army personnel's under the carpet in a very presentable and sophisticated way, but the medical examination and the opinion sought from the Block Medical Officer Kralpora clearly evidences the fact that the offence of gang rape was committed on the persons of unfortunate victims." Despite all this incriminating information, the fact that the police chose to conveniently close the case as "untraced" and now continue to delay investigation points to how the legal process is used to provide cover to the army, while keeping victims engaged in a 24 year long legal battle—a trauma and a violence in itself.

The mass rape has left the village with horrific memories, and impacted the community socio-economically, especially in terms of the cost of health-care, and deprivation of the opportunity to seek education without discrimination. Many young people, especially young girls from the village have had to discontinue higher education due to persistent ostracization on account of belonging to a "raped village". Women from the village also experience difficulty in finding partners for marriage as they are looked upon as "girls from raped families" "a bad omen", "a shame".⁸⁹

The ongoing legal process in the Kunan Poshpora case is a recording of the truth, an effort to preserve the memory of brutality and a form of resistance against the State that has and continues to protect the perpetrators. This case continues to expose not only the Indian army – whose personnel are responsible

for the mass rape and torture, but also respected members of civil society such as Wajahat Habibullah and B.G. Verghese who sought to obfuscate the truth while holding positions where they had, at the very least a duty to act in good faith, the executive (whether in New Delhi or Kashmir) that sought at all cost to protect the perpetrators, and finally, the judiciary – particularly the Jammu and Kashmir High Court – which has thus far failed to pass a single effective order on investigations in this case, despite continuous appeals from the victims.

Meanwhile, Abdul Gani the policeman present that night, and an important eye-witness was murdered in mysterious circumstances by 'unidentified gun men' in 1993. Six of victims of mass rape and torture have died without seeing justice done, as has B.G. Verghese who was never held legally or morally accountable for his orchestration of the cover up through the Press Council of India Report.

88 Communication dated 31 March 1991 between Captain Rajesh Sharma, Adjutant of the 4 Rajputana Rifles and Dilbagh Singh, ASI, Indian Police Services titled 'Nominal Roll of Officers, JCO's & or Those Were Employed in Search Operation at Kunan Village'.

89 Statements of rape survivors to our researchers.



Military personnel stands at the site of massacre and fire.
Photo taken as part of investigations conducted by the CBI on 8th January 1993.



Locals carry the dead on Rehris. Photo taken as part of investigations conducted by the CBI on 8th January 1993.



Maruti Car burnt at the site of the massacre. Photo taken as part of investigations conducted by the CBI on 8th January 1993.



Debris of shops burnt on Tehsil Road-the water tank can be seen in the background.
Photo taken as part of investigations conducted by the CBI on 8th January 1993.

B. THE MASSACRE AT SOPORE, BARAMULLA DISTRICT, 1993

TIMELINE

Date	Event
13 Apr 1992	First Burning of Sopore took place
Apr 1992	94 Battalion BSF replaced the 76 Battalion BSF in Sopore
22 Jul 1992	Commandant S. Thangappan joined as officiating Commandant of 94 th Battalion
25 Dec 1992	F Company of 94 Battalion BSF shifted to Arampora
Jan 1-5 1993	Sopore Bandh to protest creation of Arampora Post
6 Jan	Sopore Massacre and Second Burning of Sopore took place
6 Jan	FIRs 8/93 and 9/93 filed by Civil Society and BSF
6 Jan	Inspector/SHO Abdul Rasheed Dar began investigations
7 Jan	Parallel investigations by Crime Branch
7 Jan	94 Battalion BSF ordered to moved to Pulwama
20 Jan	Two cases filed by CBI and Investigations began
30 Jan	Commission of Inquiry by Justice Amarjeet Choudhary set up
17 Jul 2013	CBI filed case before CJM for both FIRs
18 Nov 2013	CJM directed it to be filed before TADA court for both FIRs
4 Dec 2013	CBI filed both closure reports before TADA court
28 Jun 2014	Protest petition filed before TADA Court
14 Jul 2014	CBI ordered by TADA Court to provide all documents of closure report on next date
4 Sep 2014- 26 Feb 2015	CBI did not appear. No documents provided
26 Feb	CBI filed documents and applications against the right of the protest petitioners to be heard or have access to documents. Response to be filed by protest petitioners and then arguments heard. BSF filed their position with regard to FIR no. 9/1993. BSF did not contest the closure of the case.
31 Mar 2015	Responses submitted. CBI did not appear. Therefore no arguments can be heard.
31 Mar 2015 – 30 Jul 2015	CBI did not appear and therefore no arguments can be heard on applications
30 Jul	Parties informed that early TADA judge has been transferred. New judge yet to receive formal powers to function.
3 Sep 2015	Next Date of Hearing

Introduction

On 6 January 1993, personnel of the 94 Battalion, Border Security Force [94 Bn. BSF] headquartered at Fruit Mandi, Sopore led by their Commanding Officer S. Thangappan shot and killed 46 persons⁹⁰ including one woman and at least two teenagers⁹¹, injuring 10-20 others. Many of those killed were shopkeepers or traders working in the Main Chowk, Sopore. BSF personnel burnt down the Sopore Chowk area, on both sides of the Tehsil Road over a stretch of around 2 kilometers including roadside areas of Shahabad, Bobimir Sahab, Muslim Peer, Shallapora and Kralteng [see map of the Sopore Massacre]. The property burnt down included around 250-300 shops, 30 houses, a cinema hall (Samad Talkies), a Women's Degree College, a public school, 4 or 5 bank branches and 4 vehicles.⁹²

The CBI was assigned responsibility for the investigation of the case by the Government of Jammu and Kashmir on 23.01.1993 and filed a closure report listing its findings on 16.07.2013, more than twenty years after the massacre. In its closure report it asked for the case to be shut, with no prosecutions. According to the closure report filed by the CBI before the Court of the Chief Judicial Magistrate, Srinagar the Sopore massacre was the result of "cross-firing" during an "encounter" between "militants" who ambushed an "army convoy" of five guard vehicles en route to Kupwara, blasted an Improvised Explosive Device [IED] and "opened fire from automatic weapons" on a Road Opening Party [ROP] of the 94 Battalion BSF. In its version of events, the troops responded to this attack by firing 981 rounds in "self-defense". According to the CBI, the militants engaged in "indiscriminate firing" on "innocent civilians" and troops of the 94 Battalion of the BSF with the motive to "tarnish the image" of the security forces in Sopore. The CBI contends that the fire that damaged "property worth crores" was caused by "explosion of gas cylinders" at a shop in Bhuggo Chowk where the gas cylinders were stored, in the ensuing "cross-firing".

Contextualizing Command and Camp Structure in Sopore

The 94 Bn. BSF was shifted to Sopore in April 1992 to replace the 76 Battalion BSF which was in control in Sopore. The 94 Bn. BSF remained there until 7

January 1993, the day after the massacre, when it was ordered to move to Pulwama to relieve 19 Battalion BSF, in an attempt by the administration to manage the mass protests and anger that spilled onto the public domain in the wake of the massacre. A Report by the Sopore based Jammu and Kashmir Human Rights Forum states that Sopore was burnt by the BSF for the time first on 13 September 1992 when the BSF shot dead three men, gang-raped a young woman and set ablaze 9 residential houses and 11 shops in the Nahrapora area of Sopore.⁹³

The 94 Bn. BSF was divided into A, B, C, D, E and F Companies, headquartered at the Town Hall (led by Assistant Commandant Ashok Yadav), Degree College (led by Assistant Commandant Prakash Singh), Indian Technology Institute (led by Assistant Commandant Balwant Bhaskar Joshi) the Jammu and Kashmir Bank on Tehsil Road (led by Inspector Ram Saran Singh), the State Bank of India at the Main Chowk (led by Deputy Commandant Jaideo Singh) and Arampora (led by and Assistant Commandant Kartar Singh Saroha) [see map of the Sopore Massacre]. The Tactical Headquarters of the 94 Bn. BSF were located at Arampora⁹⁴. The number of troops in each Company was about 126⁹⁵ apart from 30 additional personnel on "reserve" at Battalion Head Quarter at Fruit Mandi who were retained for "performing the operational as well as camp duties"⁹⁶.

All companies were located within a distance of 1-3 kilometers from the Main Chowk, Sopore; consequently there would have been 786 personnel of the BSF in and around the area circumscribed by the six Companies. All Company Commanders were responsible for patrolling duties, the Road Opening Party and other operational and security duties.⁹⁷ Each Company was further divided at the Platoon level and commanded by a Platoon Commander, including Inspector BS Rawat (for the B Company), Inspector Gurcharan Singh (for the C Company) and Inspector Ajaib Singh (for the E Company). The Commanding Officer of the Battalion, S Thangappan, was the "overall controlling authority" and was responsible for the "smooth administration and operational exercises in the area where the battalion [was] located"⁹⁸. Assistant Commandant

90 The CBI states there are 44 victims and that correspondingly 44 Medico-Legal Certificates [MLC's] are on record. But, in reality there are 45 victims listed in the Annexure B of the closure report submitted by the CBI. No. 39, Annexure B, has two names of victims: Ghulam Rasool Shalla and Sajad Ahmad Shalla, both of whom were killed in the massacre. Of the two the CBI has made available the MLC of only Ghulam Rasool Shalla. Our research reveals that both Abdul Rashid War and his son Nazir Ahmad War were killed in the massacre. However, the CBI lists only Abdul Rasheed War as a victim. MLC No. 49 relates to his death.

91 MLC of Sajad Ahmad Shalla and Mohammad Ashraf Shalla prepared by Dr. Mohammad Yatoo lists both as aged around 15 years.

92 Statement of Abdul Ahad Wani, Naik Section Grade No 49 Fire Service, Sopore to the CBI, corroborated by Statement of Abdul Sattar Mir, Leading Fireman Fire Station Sopore to the CBI.

93 Page 22, 'Set Ablaze- Apple Town Sopore', Jammu and Kashmir Human Rights Forum, Sopore.

94 In the Section 161 Statements of the BSF, there are references to Tactical [TAC] and Battalion Head Quarters. The Tactical Headquarters' at Arampora, while the Battalion Headquarter' are located at Fruit Mandi.

95 Statement of Balwant Bhaskar Joshi, Assistant Commandant, Company Commander of the C Company, 94 Battalion BSF to the CBI on 10th November 1993.

96 For the over all deployment and command structure of the BSF in Jammu and Kashmir, see Chart 6, in Chapter 1.

97 Statement of Kartar Singh Saroha, Assistant Commandant, Company Commander of the F Company, 94 Battalion BSF to the CBI on 15th October 1993.

98 Statement of Kartar Singh Saroha, Assistant Commandant, Company Commander of the F Company, 94 Battalion BSF to the CBI on 15th October 1993.

MN Sajjan was “second in command” while Assistant Commandant Prakash Singh was the Quarter Master of the Battalion in charge of “general administration”⁹⁹. The Deputy Inspector General, BSF, Baramulla Sector, RS Jasrotia, “camped” at the “TAC HQ” of 94 Bn. BSF at Fruit Mandi on the day of the massacre, and was in a position of not only “apprising the situation” as per protocol but also issued “directions” for the Road Opening Party’s that day to the Commanding Officer. Finally, Inspector General of the BSF, Frontier Head Quarter, Srinagar, Ashok Patel also visited the Head Quarters of the 94 Bn. BSF at Fruit Mandi, Sopore, had “detailed discussions” with the personnel on 6 January 1993 from 6:00 pm to 7:30pm and then left for Srinagar¹⁰⁰.

Before the Massacre: An “Infected”/“Infested” Sopore

Around ten days prior to the massacre, on 25 December 1992, the F Company of the 94 Bn. BSF, located at the Old Bridge, Sopore on Old Sopore Road was shifted and a new post comprising of personnel of the F Company was created at Arampora. One Company of 94 Bn. BSF previously posted at Kushalmatto was shifted to Arampora, to a “small-park surrounded by houses, shops” after December¹⁰¹ as Sopore in general and Arampora in particular “was infested by militants”¹⁰². At the time of the massacre, the BSF were “in process of constructing bunkers” in the area for troops “on priority basis”¹⁰³ after “it was seen [by the BSF] that after every attack on security forces the militants had been escaping... through the uncovered areas of Arampora leading towards Dangerpora and Nowpura via Sakkar [Samad] Cinema adjoining to Iqbal market, Sopore” as “no post of the BSF was established till that time [see map of the Sopore Massacre].”¹⁰⁴

Though militants had fired on BSF troops regularly, in the past but there were “no casualties before 6 January”¹⁰⁵, according to the Commanding Officer of the area. Notably, there was a Bandh (strike/ shut down) in the area from January 1 to January 5 to protest the creation of the new BSF post at

Arampora¹⁰⁶. Tariq Ahmad Kanjwal a resident of Arampora locality, whose father, Abdul Ahad Kanjwal¹⁰⁷, a senior worker of the National Conference who was killed in the Sopore massacre, says that 15-20 days prior to the massacre, two army officers came to his house and lamented the losses faced by them because of the militants’ use of Kanjwal’s shops as a strategic asset from which to fire at the BSF personnel. They had also showed his father a map of Tehsil Road on which the “danger zone” where the armed forces had previously come under attack from Tehsil Road to Arampora, “was marked in red”. In an affidavit filed before the TADA court, Srinagar¹⁰⁸, Tariq Kanjwal stated, “He [the officer] warned me that if we wanted to save our lives, we should migrate from the area”, leading Kanjwal to conclude that the massacre was premeditated.

Precipitation of the Massacre: A Theatre of Violence

Narrating the events that precipitated the massacre, Tariq Ahmad Kanjwal says,¹⁰⁹

I was the first person to open the shop that day. As I reached the road from the Muslim Peer alley, the scene was generally gloomy. I considered returning home but I was called by a BSF officer who I knew from earlier. He belonged to the 94th Battalion and was about 55 years old. He had a few stars on his shoulder and was possibly an inspector...on that day his personnel were piling up bricks for their bunker... I asked him where the blast that morning had occurred. He replied that I would be already having the information, as Kashmiris were the ones responsible for blasts. Then he said the blast took place in a different area. He then told me that if the blast had taken place at the Sopore Chowk, they would have taught the residents a lesson. Suddenly there was a bullet shot. The BSF officer rushed towards Baba Yousuf alley [also referred to as ‘Chaman’ alley. See map of the Sopore Massacre]. The soldiers who were collecting bricks took up their arms and took different positions to retaliate...in the meantime the officer rushed back from the Baba Yousuf alley and informed his soldiers that one of their men has been shot dead. I heard the officer shouting to his men not to leave

99 Ibid. According to Saroha, Sajjan was on leave in 6 January 1993.

100 Statement of Thangappan, Commanding Officer, 94 Battalion BSF to the CBI on 15th September 1993 while under suspension and attached to Frontier Head Quarter, BSF, Srinagar.

101 Ibid

102 Statement of Narendra Singh Bali, Additional Superintendent of Police, Jammu and Kashmir Police, Baramulla to the CBI on the 23rd of January 1993.

103 Statement of S.Thangappan, Commanding Officer, 94 Battalion BSF to the CBI on 15th September 1993 while under suspension and attached to Frontier Head Quarter, BSF, Srinagar.

104 Statement of Thangappan, Commanding Officer, 94 Battalion BSF to the CBI on 15th September 1993 while under suspension and attached to Frontier Head Quarter, BSF, Srinagar.

105 Statement of Kartar Singh Aroha, Assistant Commandant, Company Commander of the F Company, 94 Battalion BSF to the CBI on 15th October 1993.

106 Statement of Thangappan, Commanding Officer, 94 Battalion BSF to the CBI on 15th September, 1993 while under suspension and attached to Frontier Head Quarter, BSF, Srinagar.

107 MLC No 48 relates to the death of Abdul Ahad Kanjwal but lists him as Ahad ‘Liloo’. Kanjwal received a single firearm wound in the abdomen and 40 percent burns in the third degree.

108 Government designated Court for all offenses under the Terrorist and Disruptive Activities Act [TADA]. The act was in force from 1987-1995 as ‘anti-terrorism’ law most widely used in ‘counter-insurgency’ cases. The Act was repealed by the Parliament of India in 2004, however, those charged under the act continue to be prosecuted in designated TADA Courts.

109 Statement of Tariq Ahmad Kanjwal is one of two signed affidavits presented before the Court as part of the protest petition in the Sopore case.

anyone alive in the vicinity. His exact words were “Hamara aadmi ko maar diya hai, kisi ko zinda mat chodo, jo jahan pe dikhega usko goli mar do” (They have killed our man, do not leave anyone alive, wherever you see someone, shoot them.)

Kartar Singh Saroha, Assistant Commandant and Company Commander of the F Company of the BSF at Arampora, in his deposition before the CBI says that he had “detailed a 1.5 ton vehicle” and “ten constables” of the 60-70 personnel strong Company to facilitate bringing bricks for the construction of the bunkers at Arampora. At 9:30 am they [Saroha and other personnel of the Company] began loading the bricks in the vehicle, near the over-head water tank at Tehsil Road when at about 11 a.m. militants opened fire which “two to three Jawans returned...in self defense”. The BSF personnel fired 11 rounds from LMG and 15 rounds from SLR at this time. According to Saroha, the troops simply “returned to the Arampura post” some time after the firing stopped.

According to the Commanding Officer of the 94th Battalion S. Tangappan, on the day of the massacre at about 9:40 a.m. militants blasted one IED and also opened fire from automatic weapons...on an army convoy of 5 Guards vehicles...going towards Kupwara from Iqbal market side. On receiving the information on incident from Companies, all Companies were alerted. As per directions of DIG, BSF, [R.S Jasrotia] all Companies were directed to send out Road Opening Parties- ...Situation remained normal till about 10:50 am when all of a sudden militants opened heavy volume of fire from all directions from houses and lanes, from Kushal Mutto (old bridge post) to Main Chowk, SBI, to J&K Bank (Arampora). The militants fired at the ROP as well as the posts indiscriminately. Troops also returned fire in self-defense.

According to him, Constable Arvind Pandey and Constable Jagatpal Singh, both of the Road Opening Party of the E Company on LMG duty were injured by a grenade thrown on them while they were on ROP duty at Muslim Peer.

According to Jagatpal Singh, Constable with the E Company of the BSF at the SBI post under Platoon Commander, Inspector Ajaib Singh along with 30 other BSF personnel says he “got order from...Ajaib Singh at about 8:30 a.m for performing duty [ROP] along with 20-25 colleagues on Tehsil road as some army convoy was to pass through the Main Chowk, Tehsil Road Sopore on that day. The ROP party was to perform ROP duty on Tehsil road from Main Chowk Sopore up to the water tank area, leading towards Police Station Sopore... [He] was on Light Machine Gun [LMG] duty along with Constable Arvind Pandey on the starting point of a lane at Tehsil road, leading towards Muslim Peer Mohalla.” Jagatpal Singh was hit by a bullet in his left eye which he suspects was “fired at from a truck [...] full of apples boxes, [and which was] due to a jam of its wheel, [stuck] in a ditch, and from where 20-25 persons were unloading

boxes”. His colleague Arvind Pandey, also of E Company, 94 Bn of the BSF was also shot and later died the same day. Of the massacre Jagatpal Singh says that “I was not a party to the killing of innocent civilians of Sopore nor I was a party to setting of fire of public property at Sopore”.

Mohd Abdullah Shalla, a resident of Shallapora, Sopore who lost four members of his family says¹¹⁰, *On 5 January 1993, in the evening, we had brought a truck loaded with 400 boxes of apples from Handwara...before the truck could enter the Shallapora lane the truck got stuck in a manhole. We had to unload the truck to get it out of the manhole but it was late night and we could not do it. Then next day morning...I along with my family members...our laborer...went to unload the truck. It was about 9:45 in the morning when we were unloading the truck, that the firing by personnel of the 94th Battalion BSF began. I was outside the truck while my cousins were inside the truck. I ran for safety and took refuge in a nearby fabric shop. After entering shop, I heard shouts of BSF men saying “Jo jahan milayga goli maro, Aag lagao” (Where ever you find them, shoot them, set fire). Then after about 30 minutes, the fire started. While hiding in a shop beneath the Grand Hotel [see map of the Sopore Massacre], Shalla and others hiding there were taken out by BSF personnel where they were made to stand in a queue and told to run. As they ran, they were shot from behind but Shalla managed to escape into Shallapora lane. Shalla is an eyewitness to the killing of Zahoor Ahmad Khan of Shallapora, a teacher by profession, who, Shalla says was shot in the back while running.*¹¹¹

According to Balwant Bhaskar Joshi, Assistant Commandant and Company Commander of the C Company of the 94 Battalion of BSF, upon hearing news of Arvind Pandey and Jagatpal Singh being injured, “they [Assistant Commandant and Commanding Officer of the B Company, Prakash Singh, Sub-Inspector and Commando Platoon Commander Sudama Rai and Balwant Bhaskar Joshi] got ready in two bunkers along with available troops i.e. 14-15 personnel of commando party which used to be kept reserve in Battalion Head Quarters [HQ] for the purpose of emergency/operational duties.” It was about 11:30am when they reached Tehsil road, leading towards Muslim Peer Mohalla. Joshi says that he then “came to Degree College at about 12:15 pm and remained there till about 3: 15 pm ” after which he “went back to the Battalion Head Quarters”.

Tariq Ahmad Kanjwal witnessed a BSF officer along with 8-10 other BSF personnel shooting at Abdul Khaliq Malik, a resident of Arampora who received multiple bullet injuries.¹¹² Kanjwal was himself shot, and dumped in the shop by the officer who told his men “Isko andhar fenko, aur in salon ko gun powder faenkey key zinda jalao” (Throw him inside, and then throw gun

110 Statement of Mohammad Abdullah Shalla is one of the signed affidavits presented before the Court as part of the protest petition against the case closure in the Sopore case.

111 Medico Legal Certificate of Zahoor Ahmad Khan prepared by Dr. Ghulam Hassan is of the opinion that the deceased passed away due to ‘massive hemorrhage’ due to ‘single firearm wound on back in the intersepal region [emphasis added].’

112 Medico Legal Certificate of Abdul Khaliq Malik prepared by Dr. Mohammad Yatoo is of the opinion that the deceased passed away due to ‘massive hemorrhage’ due to two bullet injuries.

powder and burn these people alive). Kanjwal was later recovered, in an unconscious state by his relatives from amongst the pile of dead bodies. While in his shop, Kanjwal saw BSF personnel of the 94th Battalion enter into a government bus coming from the bus stand and moving in the direction of Bandipora stop near Khayam hotel [next to Samad Talkies], and begin shooting passengers indiscriminately. Tariq Ahmad Kanjwal also says that he saw BSF personnel stopping a Maruti car from which they took out the driver and told him to run. Then, the BSF personnel shot the driver in the back and burnt the Maruti. [See map of Sopore Massacre] Mehra Begum, a resident of Doabgah, traveling from Sopore to Bandipora in the government bus, says in a statement given to researchers of this report that the bus full of men, women and children was close to Khayam Hotel near Samad Talkies, at around 10:30 am, when the driver stopped the bus because there was firing was going on ahead. Mehra Begum saw a huge fire and 2-3 dead bodies lying in the middle of the road, before armed and uniformed BSF personnel entered the stationary bus and ordered everyone to put their hands up. Following this, the personnel started shooting people in the bus indiscriminately. This included a couple from Haathlung both of whom were shot and one of whom [the wife] died on the spot. Mehra Begum was also shot in the arm, near the shoulder. She escaped when the BSF personnel, distracted by a loud noise at Samad Cinema left the bus. After this, a few locals took her to Baramulla Hospital along with two other passengers, one of who died en route to Baramulla.

Shafaqat Hussain Dar of Mahrajpora, Sopore who owned a shop at the Main Chowk heard the firing as he was about to open his store, and ran into Samad Talkies for refuge. He found that around 200-250 adults and children had already gathered in the compound to escape the firing. From 10 am onwards, from his locations on the first and second storey of the Cinema building, he saw fire in the Main Chowk, and heard the BSF men shouting "*Sallon ko pakdo...jo jahan mile mar do*" (Get hold of them, kill them where you find them) as well the cries of the victims. The BSF personnel set fire to the building next to the Cinema, Hotel Khayam, made mostly of wood. According to Dar, the BSF personnel expelled a white powder from their guns, then fired a few shots at it upon which sparks emanated, starting a fire. Upon seeing the rising flames, those holed up in the cinema, including Shafaqat jumped out of the Cinema into the Shallpora graveyard, adjacent to the building. Shafaqat says he lost consciousness as soon as he jumped and awoke only to find himself in Soura Hospital, Srinagar, five days later.

Aftermath of the Massacre

The Police:

Station House Officer [SHO], Sopore informed Additional Superintendent of Police, Jammu and Kashmir Police Narender Singh Bali, by telephone at his residence/office at the Town Hall that dead bodies were lying in the Main Chowk¹¹³. The SHO in turn had also received this information from personnel of the BSF who had requested him to remove the dead bodies. Bali deputed Assistant Sub Inspector Ghulam Hassan Teli and others to remove dead bodies¹¹⁴. At 11:35 a.m. Teli and his team came back and told him that they were, "stopped by the BSF personnel near the Central Bank of India from a distance of about 100 yards by raising the arms signal. They [BSF] then opened fire on the policemen"¹¹⁵. At 12:15 p.m. ASP Bali reached the Main Chowk and saw two fire tenders standing outside the fire station about 10 yards from the Main Road. Upon asking the fire personnel the reason, they stated that they had been "prohibited by BSF with the threat that if they go ahead they will be fired upon".¹¹⁶

The Firefighters:

Ahmad Hussain Andrabi, Station Officer of the Fire Station Sopore was in charge of the 21 fire fighters, 4 mechanic drivers and 3 drivers who fought the fire that day. According to his police deposition, when the fire crew reached the Main Chowk Shopping Complex at 11:50 a.m., a distance of only a few yards from the Fire Station, Sopore they found that there was a big fire at Tehsil Road, College Road and Kupwara Road (Old Bridge Road). He saw around 20-25 personnel of the BSF "roaming" on College Road, Tehsil Road, Kupwara Road with their weapons. The BSF personnel were "firing continuously[...] in all directions", but he "did not see anyone shooting at the BSF personnel from anywhere." The moment the fire personnel rolled out their hose-pipes to extinguish the fire, the BSF personnel stopped them, around 50 metres away from the fire, and kept them under "siege" for around one hour until 12:50 pm¹¹⁷. The BSF personnel threatened the fire personnel and told them that "any fire fighter who tried to operate the fire fighting media shall be killed instantly"¹¹⁸. According to one of the fire-fighters the BSF personnel were so enraged "that even ASP, Sopore Shri Bali could not prevail upon them", which resulted in "delayed action" by around an hour¹¹⁹. They started work only after "the army came and allowed them to begin work"¹²⁰. The fire was brought under control by seven fire crews of at least 60 fire personnel and 10

113 Statement of Narender Singh Bali, Additional Superintendent of Police, Jammu and Kashmir Police, Baramulla to the CBI on the 23rd of January 1993.

114 Statement of Narender Singh Bali, Additional Superintendent of Police, Jammu and Kashmir Police, Baramulla to the CBI on the 23rd of January 1993.

115 Ibid

116 Ibid

117 Statement of Abdul Ahad Wani, Naik Section Grade No 49 Fire Service, Sopore to the CBI.

118 Statement of Ahmad Hussain Andrabi, Station Officer, Fire Station Sopore to the CBI.

119 Statement of H.U Bhat, Sub-Officer, Fire Station Sopore to the CBI.

120 Statement of Abdul Sattat Mir, Head Constable, Fire Station Sopore to the CBI.

fire tenders from Sopore, Bandipora, Baramulla, Pattan, Magam, Keriri, Batamaloo, Gowakadal fire stations, working until 10pm on 6 January 1993 to bring the fire under control. The fire was completely put out only on 8 January 1993 two days after BSF personnel of the 94 Battalion lit it.

The Doctors

Ghulam Hassan Sheikh and Mohammad Yatoo, both Assistant Surgeons, at Sub-District Hospital, Sopore heard firing at about 11 a.m. coming from the Main Chowk area. This which was followed by dead and injured persons being carried into the hospital starting at 11: 15 a.m. At about 2:30 or 3:00 pm, on the basis of information from locals they proceeded towards the Butpora and Shallapora areas respectively along with some paramedical staff and upon reaching there, found dead bodies. Dr. Ghulam Hassan Shiekh prepared the Medico Legal Certificates [MLCs] of nineteen of the dead where as Dr. Mohammad Yatoo prepared the MLCs of seven of the deceased. Since the deceased had sustained "bullet injuries"¹²¹, both doctors describe the cause of death as "apparent".

The Legal Process

Two First Information Reports [FIRs] were filed in relation to the Sopore massacre. The informant Syed Mohammad Ilyas, lawyer and President, Anjuman Moin-ul-Islam, Sopore¹²² filed FIR no. 8/1993 under sections 302 [murder], 307 [attempt to murder] and 436 [Mischief by fire or explosive substance with intent to destroy houses etc.] of the Ranbir Penal Code [RPC] relating to the killing and destruction of property by the 94 Battalion BSF. In contrast the BSF filed FIR no. 9/1993 under sections 392, 302 [murder], 307 [attempt to murder], 436 [Mischief by fire or explosive substance with intent to destroy houses etc.] RPC, 3/25 Indian Arms Act, and 4 (iii) TADA [Terrorism and Disruptive Activities Act] in relation to cross-firing and subsequent damage and deaths.

On 23 January 1993, following investigations by the Crime Branch and the Police, and as per orders of the Government of Jammu and Kashmir investigations under both FIRs were taken up by the CBI on 20 January 1993. A one man Commission of Inquiry headed by Justice Amarjeet Choudhary of Punjab and Haryana High Court, Chandigarh was set up by the Government of Jammu and Kashmir on 30 January, 1993 but the Commission's term expired on 30th of April, 1994 and no report looking into the Sopore massacre was submitted by the Commission, which

incidentally never visited the site of the massacre.¹²³

Twenty years after the massacre, on 4 December 2013, a closure report with regard to both FIR's was filed before the TADA Court following the clubbing together of both by the Court of the Chief Judicial Magistrate [CJM], Srinagar, the Government designated CBI Court¹²⁴. The CBI had taken statements of 115 persons including 54 firemen, 3 doctors, 11 civilians and 5 personnel of the 94 Battalion BSF in 1993. The CBI concluded that during the investigation, the witnesses examined by the local police and CBI, were "unable to identify the BSF personnel involved in the incident and they could not give details of the firing or cross firing" and that "thorough investigation could not yield any result for the reasons mentioned above." Noting that the accused BSF personnel have "already been tried and convicted for the alleged offences u/s 302, 307 & 436 RPC" by BSF Court Martial (i.e. General Security Force Court constituted under BSF Act, 1968) the CBI urged that the case be closed in light of such findings.

On 28 June 2014, three persons-Tariq Ahmad Kanjwal, Mohammad Abdullah Shalla and Ghulam Rasool Ganai who lost their family and relatives in the massacre filed a protest petition before the TADA Court urging the Court to conduct further investigations into FIR no. 8/93 noting that "the investigations by the CBI have been incomplete and clearly affected by an interest to protect the perpetrators of the crimes i.e. *mala fides* on the part of the CBI".¹²⁵ In response the CBI contended that the application had "no *locus standi*" in the case and sought its dismissal. On 14 July 2014, the court ordered the CBI to submit all documents supporting the closure report before the court, in response to which the CBI in its submission before the court held that "no person or party including the applicant" should be allowed to have access to the documents gathered by the CBI.

On 30 July 2015, the parties were informed that the judge of the TADA court had been transferred and a new judge was now in place, but no powers had been notified. The case remains pending.

Manufacturing "Closure"- A Critique of the CBI Report

The CBI closure report is one example of how investigative agencies of the State use the investigative process to provide cover for the perpetrators of the crime-- by obfuscating facts, pointing to a manufactured "non-cooperation of

¹²¹ Statements of Dr. Mohammad Yatoo and Dr. Ghulam Hassan to the CBI.

¹²² Syed Mohammad Ilyas passed away in 2010.

¹²³ On record is a 'Memorandum' issued by Commissioner Secretary, Law Department, Government of Jammu and Kashmir dated 20.12.1994 noting that Justice Amarjeet Choudhary had been "avoiding visiting" the site of the massacre and a displayed general lack of interest in investigating the case; in light of this the Law Secretary write he "recommends winding up the Commission" on account of the Commission being a "farce".

¹²⁴ The Court of the CJM, Srinagar, is the government designated Court for all cases under investigation by the CBI.

¹²⁵ Tariq Ahmad Kanjwal was injured in the attack of 6 January 1993 and sustained a bullet injury on his right leg. Further, his father, Abdul Ahad Kanjwal was killed. Mohammad Abdullah Shalla lost four family members Mohammad Ashraf Shalla, Ghulam Rasool Shalla, Bashir Ahmad Shalla-- all cousins - and Sajad Ahmad Shalla-his brother along with his employee Ghulam Rasool Sofi. Ghulam Rasool Ganai lost his son Altaf Ahmad Ganai in the massacre.

witnesses", conspiracy theories ascribing the criminal acts to an attempt by "militants" to "tarnish the image of the security forces" while continuing to mount the presupposition of "self-defence" on behalf of the BSF. The burden of such *malafides* in the investigation of the CBI, leads its report to logical absurdness in several aspects. For example, at paragraph 16.19, the CBI states that: "...it is very difficult to reach at the conclusion about the fact as to who opened fire first during the incident..." But, just a few paragraphs prior, at para 16.16, it states: "Investigation revealed that the alleged indiscriminate firing by the militants on the troops of 94 Bn. BSF and innocent civilians at Sopore on 06.01.93 was done with the motive to tarnish the image of the security forces in the area, as the BSF troops acted only in self defence..." Finally, at paragraph 16.15 it states that: "...the cause of firing as well as the motive behind the incident could not be established". Therefore, while on one hand the CBI states that it is uncertain who fired first, on the other, the BSF is said to have acted in self-defence. Further, the CBI in paragraph 16.15 is unable to find the motive, but in paragraph 16.16 it appears to uncover that the motive is to tarnish the image of the security forces. Most importantly, at no point is any actual evidence, such as witness statements or medical reports marshalled to lead to any of the above conclusions.

Though eyewitness accounts provide rich material of a pre-existing conspiracy to commit the attack of 6 January 1993, the exact role of the BSF personnel, and identifying information of BSF officers involved in the attack, the CBI has chosen to record testimonies of only 15 civilians¹²⁶ effectively erasing from legal memory the crucial eyewitness testimony of key witnesses such as Tariq Ahmad Kanjwal, Mohammad Abdullah Shalla, Mehra Begum and Shafaqat Ahmad Dar. Even when irrefutable evidence is recorded by the CBI itself as in the case of Mohammad Ramzan Beigh who was working as a laborer in the fruit shop of Mohammad Ramzan War at the time of the massacre [see map of Sopore Massacre for shop located in the War Building] such crucial eyewitness testimony is conveniently brushed aside. Mohammad Ramzan Beigh says the BSF lined up the men (including him) from the shop, at the JK Bank nearby and fired upon them at close range. Ramzan Beigh was hit by a burst of fire in the leg (which had to be amputated later). Despite its gravity and coherence, this testimony, for the CBI, fails to be sufficient to charge the BSF of any offence.

From the depositions of the BSF personnel, Commanding Officer 94th Bn BSF, S. Thangappan, Assistant Commandant Prakash Singh, Assistant

Commandant Singh Saroha and Assistant Commandant Balwant Bhaskar Joshi, it is clear that Sopore as a whole was viewed by them as an area "infected"/ "infested" with militants who "frequently attacked...the BSF" with "sophisticated weapons", used the "Arampora" - "Samad Cinema" - "Iqbal Market" areas as an "escape route" after "every attack" and that the geography of the area especially that the "densely populated" areas in and around the Main Chowk "having very narrow lanes and multi-storied buildings" made it impossible "for the security forces to chase the militants" as they used to "mix with civilians" or go into their "hideouts" in the area despite the presence of six Companies of the BSF at "sensitive points" like Samad Cinema, Arampora, Degree College, Muslim Peer and Iqbal Market.¹²⁷

It also seems apparent that after December 1992 a strategic decision was taken by "higher officers" of the BSF to create a bunker at Arampora at a "priority basis". This corroborated by the testimony of Tariq Ahmad Kanjwal which sheds light on the roots of the Sopore massacre and the massive fire that accompanied it. Yet, the CBI refuses to connect the notions of a militant infested Sopore, the frustration of the BSF at not being able to dampen the militancy--to the extent a robust militancy was connected with the spatiality of the Sopore area and its people- and the decisions taken by the officials of the BSF around December 1992, to the retaliatory massacre itself. Though it is clear from testimony of several BSF personnel to the CBI that Assistant Commandant Prakash Singh, Assistant Commandant Kartar Singh Saroha, Assistant Commander Balwant Joshi, Platoon Commander Sudama Rai, Inspector Gurcharan Singh and Inspector Ajai Singh were present at the site of the massacre-in and around the Main Chowk, Sopore between beginning around 10 am on 6th January 1993, the CBI finds them blameless based, it seems, solely on the denial of the perpetrators of their own guilt.

Throughout testimony of the BSF personnel to the CBI, the "militant" appears as a specter conjured up whenever convenient to prop up the theory of "cross-firing" effectively enabling the perpetrators to veil or justify their crimes. It is useful to highlight the testimony of Assistant Commandants Joshi and Prakash Singh who jointly led "the 14-15 personnel of commando party...kept reserve in Battalion Head Quarters [HQ] for...emergency/operational duties". According to Joshi "he did not see any militant at place of occurrence i.e. Main Chowk area, Tehsil road, Degree college, Kupwara road and Old Sopore road" and that there was "no firing on them en route" [from the Head Quarters at Fruit Mandi to the SBI post

¹²⁶ Of the 15 testimonies of civilians gathered by the CBI, only 10 are of potential eyewitness -the rest are given by doctors and others from civil society in Sopore.

¹²⁷ General Krishna Rao in his book 'In Service of the Nation' writes that militants had declared Sopore the "rajdhani" of a "liberated" area of Kashmir in 1993. In September 1993, in a meeting with the Prime Minister of India, the General, now Governor of Kashmir, suggested to the latter, "large-scale operations to clear the town and surrounding areas" for which the army estimated they would need "a division strength" (around 20,000 army personnel). Apparently, this "action" was not undertaken on grounds that the ensuing death toll estimated at "800 to 1000 civilian casualties" would cause India to "certainly lose Kashmir". According to Krishna Rao, "The Prime Minister smiled and said that he did not wish to lose Kashmir." This meeting is indicative of how the structures that enact mass violence in Jammu & Kashmir move beyond the police and the military into the realm of political decision-making up until the level of the Prime Minister of India.

through Sopore-Baramulla road] despite Singh's claim that "the heavy cross firing was going on" in which, purportedly, the "BSF was being attacked from all sides." Similarly, Company Commander of 94 Bn. BSF S Thangappan, in his statement says that he "had given instructions not to open fire unless militants were spotted and since the militants were firing from inside the houses from a distance, [hence] there was no return fire." The firemen on the scene too deposed before the CBI that the firing was unilateral, from the BSF and that they were the ones firing indiscriminately all directions. Yet, the BSF personnel of 94 Bn BSF "admitted to have fired 981 rounds", from "110 weapons" in the incident. It is apparent, that the CBI's use of the language of vague and unspecified "cross-firing" provides acceptable cover for the BSF personnel who perpetrated the massacre.

The 44 Medico Legal Certificates [MLCs] of the deceased indicate that most of those killed in the Sopore Massacre were fired at, from the front and received multiple bullet wounds concentrated in a particular area¹²⁸. With the exception of three persons, all of those killed were shot in the head, chest and abdominal regions--21 of the deceased received firearm injuries in the chest, 11 received fire arm injuries in the abdomen and 6 were shot in the head including 2 who were shot in the forehead. 37 of the victims were shot at in the front in the head, chest or abdomen at least once. Contrary to being indicative of cross firing, such a pattern of injuries leading to death, points to the BSF personnel perpetrating one-on-one extrajudicial executions. Dismissing the opinion of the doctors at the scene who prepared the MLCs and describe the cause of death as "apparent" because the deceased had sustained fatal "bullet injuries", the CBI makes notes of several "lacunas" and "serious discrepancies". This includes the fact the dead bodies were examined "externally and not dissected" and that "no bullet heads were recovered". Little consideration is given to the exigent circumstances under which the MLCs were prepared--instead the CBI bizarrely concludes that the MLCs can be not used to "reach any logical conclusion regarding the cause of death".

With regard to the arson and destruction of property, the CBI investigation proves no better at determining the cause of the fire, concluding that the fire was caused by "explosion of gas cylinders during exchange of fire between the BSF troopers and the militants" located at Bhugoo Chowk, Sopore nearly one kilometer away from the Main Chowk where the "exchange of fire" took place [see map of the Sopore Massacre]. The CBI merely reproduces the claim of Commanding Officer, S Thangappan who says, "it was learnt that due to explosion of grenade and cross-firing one gas cylinder shop...caught fire." A key eye witness, Tariq Ahmad Kanjwal, who was not even approached by the CBI in its investigation, says that while, "there was a crockery shop at Bogu [Bhugoo]

chowk at the Muslim Peer alley end...selling lighting gas without gas liquid." This shop was definitely not the cause of the fire and destruction. He states, "the fire started 1.5 kms away from the crockery shop." Moreover, many shops between Bhugoo Chowk and the Main Chowk remained unaffected by the fire [see map of the Sopore Massacre].

The CBI also does not adequately concern itself with the allegation of the fire service of not being allowed immediate access to the scene of the fire. The CBI seeks to discount the evidence of several Sopore fire fighters-- that they were delayed by the BSF -- by using the testimony of the fire service personnel from neighbouring towns, who arrived on the scene later. But, this argument is absurd and once again an apparent attempt to, discredit any allegation against the BSF, by any means possible. The CBI states that the evidence of the personnel of the Sopore fire service being delayed by the BSF "is not corroborated by the other fire service personnel from other areas who arrived subsequently". There can be no question of the other fire service personnel corroborating the Sopore fire service personnel version as the other personnel arrived several hours later, by their own accounts. It is only the Sopore fire service personnel who arrived immediately, and were in a position to stop the fire from spreading, and were obstructed by threats from the enraged BSF men, who could provide direct eye witness evidence to this effect. The bias of the CBI is apparent from the fact that they seek "independent sources" to corroborate the Sopore fire services personnel evidence for no apparent reason.

Throughout its report, the CBI makes a case for viewing massacre through the lens of "cross-firing" yet it ultimately sees the "punishment awarded" by the General Security Force Court [Court Martial] to "erring BSF officers/officials" in the Sopore massacre as reason for the case to be closed. In response to a RTI filed by our researchers, on 3 March 2014, the Chief Law Officer, Law Branch, BSF provided information related to court-martials carried out. In relation to the attack on Sopore on 6 January 1993, it is stated that a court-martial was carried out against seven personnel [no names are provided] for sections 304, 307 and 436 RPC. Therefore, it appears the court-martial was not carried out for offence under section 302 RPC -- murder. Further, all seven personnel were found guilty only under Section 436 RPC ["Mischief by fire or explosive substance with intent to destroy houses, etc"]. Therefore, the personnel were absolved of the other offences. Finally, the maximum punishment meted out, in addition to administrative strictures, is "3 months RI [Rigorous Imprisonment] in force custody". With the exception of S. Thangappan, it is also unclear how many of the seven personnel were punished with imprisonment in the forces custody. S. Thangappan was placed under suspension with effect from 15 January 1993 and was attached with

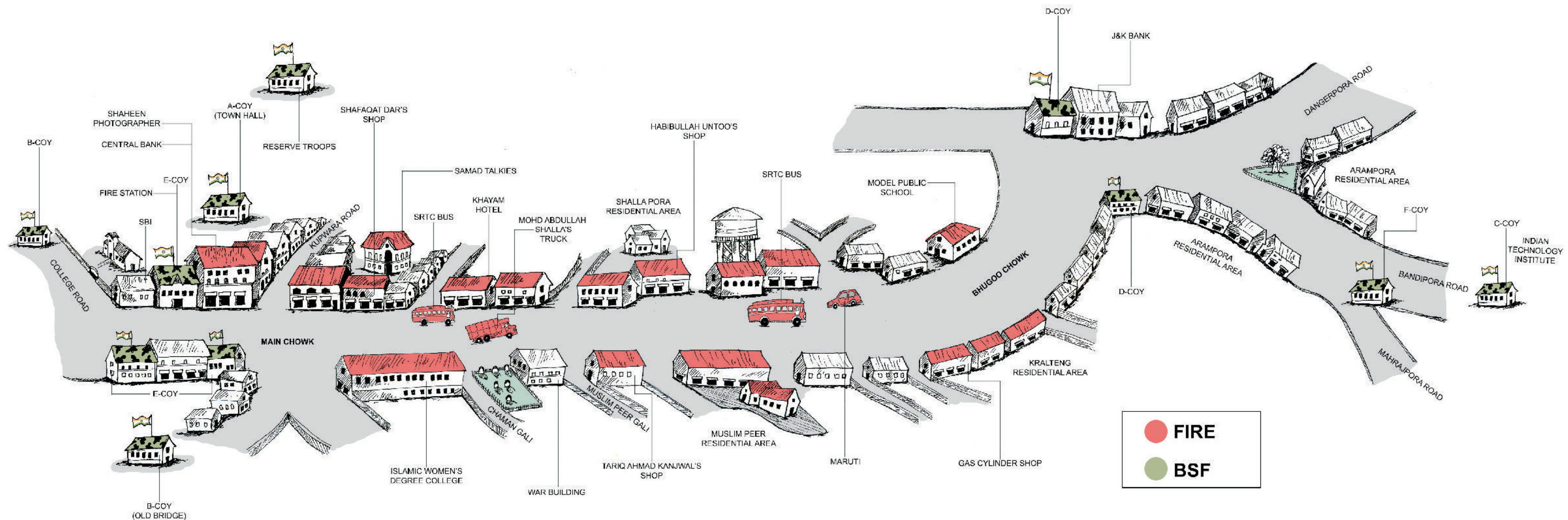
128 Medico-Legal Certificates prepared by Assistant Surgeon Dr. Ghulam Hassan and Assistant Surgeon Dr. Mohammad Yatoo of the Sub-District Hospital, Sopore seized by the CBI during investigation.

Frontier Head Quarters, Border Security Force Srinagar. This is not in line with Section 436 RPC which prescribes the following punishment: "...shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine".

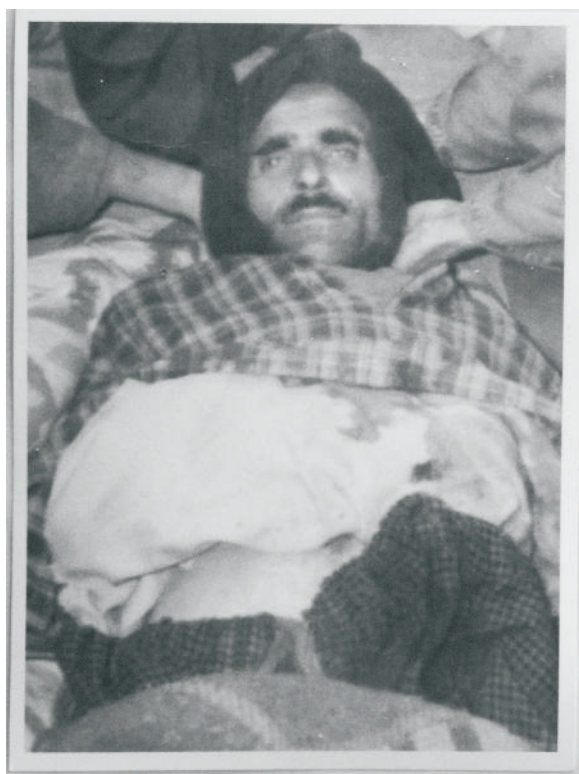
The absurdity of the CBI position is brought out by the fact that the CBI seeks to close this case as untraced [i.e. the perpetrators cannot be traced] while at the same time depending on the BSF court-martial in which perpetrators have obviously been identified. Quite obviously, the BSF is not interested in continuing the case in the civilian court with regard to its FIR – 9/1993 and has no qualms with the CBI case closing the case. Both the CBI and the BSF stand implicated in covering up the crimes of 6 January 1993.

THE MAP OF SOPORE MASSACRE 6 JANUARY 1993

Not To Scale



45+ persons killed, Sopor Market & adjoining areas including shops, houses, College, School etc. burnt by 94 Bn. BSF
Families resist CBI case closure
Victims denied justice



Saif-ud-din Dar killed in the Saderkoot massacre, 1996.



Jawa, daughter of Ghulam Qadir Dar, killed in the Saderkoot massacre, 1996.

C. THE MASSACRE AT SADERKOOT-BALA, GANDERBAL DISTRICT, 1996

TIMELINE

Date	Event
Sep 1994	Ghulam Qadir Dar is abducted by Ikhwan at the behest of Kuka Parray
1995	Ikhwan of the area started working for the 13 Rashtriya Rifles
Oct 1996	Elections are held in Tehsil Hajan-which includes Saderkoot
4 Oct	Results of the Elections held in Hajan are declared
5 Oct	The families of Ghulam Qadir Dar and others are shot dead by Ikhwani's lead by Rashid Billa
6 Oct	FIR No. 125/1996 filed in P/S Sumbal under sections 302, 307 Ranbir Penal Code [RPC]
Apr 2014	Ghulam Qadir Dar, Tariq Ahmad Dar, Manzoor Ahmad Dar and Ghulam Ahmad Dar filed a writ petition before the High Court



Ikhwani Abdul Rashid Parray alias "Rashid Billa"
-a perpetrator of the massacre at Saderkoot.

The background¹²⁹

In October 1994, Ghulam Qadir Dar was working as a truck driver in Saderkoot-Bala¹³⁰, Tehsil Hajan, when 6 persons including Abdul Rashid Parray alias "Rashid Billa", Mohammad Ayoob Dar, Wali Mohammad Mir, Nazir Ahmad Wani and Bashir Ahmad Pehlu alias "Band", all affiliated with the 'Ikhwan' approached Ghulam Qadir Mir and told him, "*Kuka Parrey Chuye Chandan!*" (Kuka Parrey is looking for you!) referring to the head of the Ikhwan¹³¹, Mohammad Yusuf Parray alias "Kuka Parray". All six men were well known Ikhwani's from Hajan, Aske-Bala and Aske-Payeen- villages located within 2 or 3 kilometers of Saderkoot-Bala. They were also involved in the kidnapping of one Ghulam Nabi Bhat, also from Saderkoot-Bala. Notably, Ghulam Nabi Bhat joined the Ikhwani after his kidnapping. Rashid Billa, Mohammad Ayoob Dar and Wali Mohammad Mir are all alive, and at large.

The men were carrying arms, were without masks and in civilian clothing except for military-style long boots. After crossing the river in a boat, the Ikhwans

accosted the victim, and took his Drivers License, Rupees 2700 from his purse, and a letter of private financing from one of his pockets. The victim was then blindfolded and taken on foot to a house where his blindfold was removed. The victim heard a wireless message instructing the abductors not to subject him to any '*zyadati*' [excessive force] as he was needed for money. The victim was moved across a few locations over the course of the next few days as the kidnappers said they were afraid of being caught by the army. Upon asking the kidnappers the reasons for his abduction, he was told that he was he had been kidnapped because of his connections with the army and that the letter of finance derived from his pocket, signed by a Hindu, was proof of his illicit connections.

On the fourth day, Ghulam Qadir Dar was taken to the house of Kuka Parray where an 'order' authorizing his release was given to him on a sheet of paper signed by Kuka Parrey himself. Unknown to the victim, his family had deposited Rupees 30,000 with Kuka Parray to secure his release, though he saw Amma Parray [an alias], brother of Kuka Parray counting a bundle of money. After this, he was released. Later, Wali Mohammad Dar, the brother of the victim, told him of being contacted by the Ikhwan to pay the amount to secure his brother's release. At the house, Kuka Parray told the victim to do his bit for the *Tehreek*¹³² and join the Ikhwan, and that he would be made 'Commander' with 35-40 gunmen under his command if he did so, but the victim refused.

According to Ghulam Qadir Dar, in 1995, a year prior to the 1996 elections, the Ikhwan led by Kuka Parray started working with the 13 Rashtriya Rifles [RR] Camp in Manasbal-Asham and a smaller Camp in Chak-e-Chandergeer, both located between Saderkoot-Bala and Hajan, approximately a 1-1.5 kilometers from his residence. Following the kidnapping, Ikhwanis, along with personnel of the 13 RR, would frequently cordon Mir's house, damage property and accuse him of having connections with the *Hizbul-ul-Mujahidden*-a front runner in the *Tehreek*. This was despite Ghulam Qadir Dar's familial history of activism for the National Conference [NC] –at the time, the premier 'pro-India' party in Kashmir.

In October 1996, while the election was taking place in Hajan, the candidate of the NC from the Sumbal-Sonawari constituency was Mohammad Akbar Lone, who would later go on to win two consecutive elections. However, in that election, Lone was defeated by Kuka Parray who had formed his own

¹²⁹ All Information relating to the background of the massacre and the massacre is as per statements by the family members of the persons killed that were provided to the researchers of this report.

¹³⁰ The terms 'Bala' and 'Payeen' are colloquially used to indicate the topographical location of a village. The addendum 'Bala' to the name of a village refers to one located at higher ground where as 'Payeen' refers to one in a low-lying area.

¹³¹ Ikhwan is a 'counter-insurgency' militia comprising of locals, often surrendered militants, with some arms training, created, armed and managed by the Indian State and substantively enabled by the Indian Army. The Ikhwan started as the 'pro-freedom' 'Ikhwan-ul-Muslimeen' but later morphed into the 'pro-India' 'Ikhwan-ul-Muslimoon'. To read about the historical context of this transformation, see Chapter 1 of this Report.

¹³² Political movement against the Indian State's occupation of Jammu and Kashmir that encompasses a wide-spectrum of resistance ideologies including armed resistance.

political party- the Awami League- comprised mostly of Ikhwanis. During the elections Ikhwanis would force people to come out and vote at gunpoint; they would man the election booths and mark the ballots of persons as they wished to. Due to vigorous campaigning by NC workers including Ghulam Qadir Dar, Saif-ud-din Dar, Ghulam Rasool Dar and Ghulam Nabi Dar, Kuka Parray received only 11 votes out of the total 3500 votes cast in Hajan. The election result was declared on the 4 October 1996 and on the next day Ikhwanis led by Rashid Billa attacked the family of Ghulam Qadir Dar and three other NC workers in their own homes.

Post-Election Attacks- The Massacres

First Attack

On the 5 October 1996 at 7:30 pm, 20 -30 Ikhwanis, all armed and in civilian clothing with long military boots arrived at the house of Ghulam Qadir Dar in a truck [JKN 2771]. In the house were Ghulam Qadir's wife Hajra Begum, his son Abdul Saleem Dar, his daughter-in-law Shakeela along with the Abdul Saleem and Shakeela's 5 children- the youngest of whom was 4 months old. Also present were Ghulam Qadir's three daughters, Jawa, Hafiza and Shahzada, his brother Ali Mohammad Dar, his nephews Mohammad Yusuf Dar, Abdul Qayoom Dar, Hilal Ahmad Dar, Ghulam Mohiduddin Dar and Abdul Rasheed Dar.

While some of the Ikhwans had covered their faces with cloth, others had not. Of the group, Ikhwan Mohammad Ashraf Rather came inside the house of the victim and asked for Ghulam Nabi Dar to come outside. The family of the victim, sensing something was wrong, did not allow Ghulam Nabi Dar to go outside. Instead he went to the *kani*¹³³ of his house and hid there. Ghulam Nabi Dar identified Mohammad Ashraf Rather four months later, when he was in Ajis, four kilometers from Saderkoot, for work and saw a man whom he recognized to be the person who came inside the house. He asked a nearby shopkeeper the name and personal details to which the shopkeeper responded that it was well known that Rather, an Ikhwan, was working with Rashid Billa and the army. Later, on another occasion, Ghulam Qadir Dar also came to know that the driver of the truck, used to transport the Ikhwanis, one Ghulam Rasool Guru, had been forced by Ikhwanis led by Rashid Billa to drive the truck.

From the *kani*, Ghulam Qadir Dar recognized Rashid Billa, Mohammad Ayoob Dar, Wali Mohammad Mir, Nazir Ahmad Wani, Bashir Ahmad Pehlu alias "Band", Nazir Ahmad Parrey alias "Fauji", Bashir Ahmad Parray alias "Bilal", Manzoor Ahmad Reshi and Manzoor Ahmad Parray [a cousin of Kuka Parray]- all from villages close to Saderkoot-Bala. Ghulam Qadir Dar also saw some members of his family in the '*angun*'¹³⁴. Meanwhile, the Ikhwan started firing;

initially, Ghulam Nabi Dar says he presumed that the firing was in the air as he heard hundreds of bullet shots and saw a bullet ricochet with the roof of his house. But when he heard cries of "*Marikh Ha!*" (We are being murdered!) from his family members, he went down stairs and saw that 3 members of his family were lying injured in the *wuz*¹³⁵ writhing in pain, while 4 others were lying dead in the *angun*. The Ikhwan had already fled, killing four members of his family within a span of 5 or 10 minutes.

The wife of the victim, Hajra, his daughter Jawa, his son Abdul Salam Dar and his nephew Abdul Rashid Dar were dead- all had been shot in the chest. His nephew Mohammad Yusuf Dar had been shot in the stomach; Hilal Ahmad Dar, another nephew was also shot in the chest along with Ghulam Mohiuddin Dar who was injured by a bullet that had grazed his leg. Mohammad Yusuf Dar, Hilal Ahmad Dar and Ghulam Mohiuddin were taken to the hospital by neighbors and survived.

When the Ikhwan arrived, they had bolted the doors of the houses of all the neighbors from the outside. They were opened after the massacre. In fact, Ghulam Qadir Dar was told by a friend, whom he does not want to name, that Kuka Parray had told Rashid Billa that even the army found it difficult to get away with killing women, and that he had been ordered to kill just Ghulam Qadir Dar in that family.

Second Attack

From the house of Ghulam Qadir Dar, the Ikhwan went to the house of his neighbor, Saif-ud-Din Dar- another NC worker. Saif-ud-din was in the house with his family, resting after dinner. In the house were his wife Raja, their children Farooq Ahmad Dar, Tariq Ahmad Dar and his daughter Firdousa. Also present were the wife of Farooq Ahmad, Tasleema Dar, the wife of Tariq Ahmad, Munira and Farooq Ahmad and Tasleema's 9 month old baby, Irshad Ahmad.

The family members recall a loud knock on the door. Saif-ud-Din Dar went to the door to open it but before he could do so the lock broke and four people forcibly entered the house. They were Abdul Rashid Billa, Wali Mohammad Mir, Mohammad Ayoob Dar and Manzoor Hamid. The family members saw Rashid Billa shoot Saif-ud-Din Dar dead. The family believes they were targeted because they had canvassed and voted for the NC candidate.

Third attack

The Ikhwans then proceeded to Ghulam Rasool Dar's house, close by. Also present in this house were Ghulam Rasool Dar's father, Ghulam Mohammad Dar, his mother Raja Begum, his wife, Fatima, his brothers Manzoor Ahmad Dar and Nazir Ahmad Dar, his sister Bega and his four children, the youngest of whom was 2 years old.

Again, the family recalls a loud knock at the door, following which the lock was broken open and three Ikhwanis Rashid Billa, Mohammad Ayub Wagay, Wali Mohammad Mir came in and shot Ghulam Rasool Dar dead. The family raised a hue and cry after which the Ikhwanis escaped while continuing to fire. Nazir

133 Attic

134 Garden

135 Veranda

Ahmad Dar, brother of Ghulam Rasool Dar is an eyewitness to the killing of Ghulam Rasool Dar, he identified Rashid Billa as the person who shot Ghulam Rasool Dar.

Fourth attack

Ghulam Nabi Dar was at home along with his wife, Raja, his daughters Firdousa and Ruqaiya and his three sons Showkat, Mushtaq and Kaiser, when there was a knock on their door. The family saw Ikhwan Abdul Rashid Billa, Mohammad Ayub, Wali Mohammad, Manzoor Ahmad and Nisar Ahmad called out for Ghulam Nabi Dar from the veranda. When Ghulam Nabi Dar came out he was shot in the chest. His wife, Raja is an eyewitness to the killing. Ruqaiya was also shot in the arm while a bullet grazed Kaiser's back.

Investigations and Legal Proceedings

On 6 October 1996, First Information Report [FIR] no. 125/ 1996 was lodged by Ghulam Hassan Sheikh, son of Habibullah Sheikh resident of Saderkoot-Bala at the Police Station in Sumbal. Habibullah Sheikh also helped in taking the injured to the hospital. The FIR was filed against "unknown persons" because the police refused to write down names of the accused, despite the complainant's identification of the perpetrators. After Ghulam Qadir Dar was visited by Minister for Home, Jammu and Kashmir, Ali Mohammad Sagar and Minister for Revenue, Jammu and Kashmir Abdul Ahad Vakil, the police finally took the perpetrators names on record.

According to Ghulam Qadir Dar the case did not progress as the army told the police that they needed the perpetrators for 'law and order' related duties. A week after the massacre the Deputy Commissioner [DC] Baramulla-a Mr. Mehta gave each family Rupees 100,000 per person killed as ex-gratia relief and one employment per household as per Statutory Rules and Orders 43 [SRO-43]. After the massacre, police protection was granted to the families-10-15 police personnel were deployed at picket in the locality where the victims' families lived.

After some time, around 20 Ikhwan led by Rashid Billa took Ghulam Qadir Dar, Abdul Samad Dar (Father of Ghulam Nabi Dar), Ghulam Mohammad Dar (Father of Manzoor Ahmad Dar) and Farooq Ahmad Dar (son of Saif-ud-din Dar) to the office of the Chief Judicial Magistrate, [CJM] Sopore coercing the survivors to record statements that exonerated Rashid Billa and others as perpetrators. Ghulam Qadir says that he later explained this to a lawyer, and finally no such statement was recorded. A year after the massacre, the niece of Ghulam Qadir Dar, 'Julie', was forced to marry Rashid Billa. Now his wife's brother's family pressurizes Ghulam Qadir Dar to give up the case, on account of Julie and Rashid Billa having 4 children together.

Ghulam Qadir Dar, Tariq Ahmad Dar, Manzoor Ahmad Dar and Ghulam Ahmad Dar filed a writ petition before the High Court in April 2014. The High Court has issued notice to all the parties. The petition remains pending.

Critique

The massacre of 7 persons in Saderkoot-Bala by the personnel of the Ikhwan highlights the pervasiveness of the culture of impunity within which the Ikhwan functioned. The victims were all NC activists themselves or close relatives of those who were. Though the victims were affiliated, directly or indirectly, with the NC, there was little progress in the case from 1996 to 2002 and then from 2008-2014, when the NC was part of the government in power in Jammu and Kashmir. A memo drafted by Investigating Officer of the Police Station in Safapora says "We are unable to arrest the perpetrators because they work with the Army...we have approached higher authorities and army officials for directions." While the role of the army in arming and enabling the Ikhwan has been discussed at length in Chapter 1 of this Report, the case of this massacre also highlights how electoral politics under pervasive militarization can operate as a violent structure even for those willing to participate in it.

As noted in the Report, *Voting at the Point of a Gun* by the Andhra Pradesh Civil Liberties Committee in July 1996, "The [Indian] 'game plan' is to introduce a criminalized electoral force into the electoral area, with the hope that it will succeed in breaking the poll boycott. If the army's guns and the guns of the counter militants together succeed in getting a decent percentage of votes polled, thereby giving victory to the Government of India in its efforts to hold polls by hook or by crook, then...it can demonstrate to the world that the Indian State still has its way in Kashmir."¹³⁶

Of the 19 family members killed in the Sailan Massacre, 13 were female, 9 were male; 11 of whom were minors.



Lassa Sheikh,
65 years



Zainab Begum,
50 years



Jabeena Kausar(12)
&
Shaheena Kausar(8)



Shaheen Akhter,
14 years



Showkat Mehmood,
10 years



Tahira Parveen,
8 years



Sarfaraz Ahmad,
8 years



Hassan Mohammad,
70 years



Zaitun Begum,
35 years



Yasmeen Akhter,
20 years



Shagufta Akhter,
10 years



Javeda Akhter,
15 years



Mohammad Iqbal,
17 years



Tanveera Kausar,
4 years



Yasmeen Akhter,
10 years



Zareena Begum,
30 years



Ahmad Din Sheikh,
55 years



Saro Begum,
65 years

D. THE MASSACRE AT SAILAN & MOHRA BACHAI, POONCH DISTRICT 1998, 1999

TIMELINE

Date	Event
3Aug 1998	Militant Imtiyaz Ahmad kills SPO Zakir Hussain
3/ 4 Aug	Personnel of 9 Para Army and 4 SPO's kill 19 members of the extended family of Imtiyaz Ahmad
4 Aug	Dead bodies of the victims taken to Tehsil Complex, Surankote
4 Aug	FIR No. 122/98 was lodged by the local police against "unknown persons" in Sailan Massacre
5 Aug	Dead bodies buried at the Dar-ul-Shaheed in Surankote
4 Sep1998	Justice Kuchai of SHRC to lead inquiry into Sailan Massacre
9-10 Sep	SHRC led by Justice Kuchai conducts 'spot inquiry'.
21 Nov 1998	Justice Kuchai submits SHRC report to the Chief Minister Farooq Abdullah
26 Nov 2011	Three surviving members filed Writ Petition No 1572/2011 in J &K High Court.
20 Sep2012	Status Report filed by Inspector Maroof Ahmad on FIR No. 122/98 citing perpetrators "could not be traced"
21 Nov2012	J &K High Court directed the investigations to be carried out by CBI.
18 Jun 2013	CBI urges the investigation of the Sailan massacre to be transferred to the NIA but then backtracks.
10 Sep 2013	CBI files Case no. RCDCST2013S0023 in Sailan Massacre
4 Nov2013	CBI takes statement of Mohammad Shabir under section 161 Code of Criminal Procedure, Jammu and Kashmir
7 Nov	CBI takes statement of 161 statement of Abdul Ahad under section 161 Code of Criminal Procedure, Jammu and Kashmir
9 Nov	CBI takes statement of Maqsood Ahmad under section 161 Code of Criminal Procedure, Jammu and Kashmir
21 Nov	CBI takes statement of Mohammad Latief under section 161 Code of Criminal Procedure, Jammu and Kashmir
16 April 2014	CBI takes statement of Mohammad Afzal under section 161 Code of Criminal Procedure, Jammu and Kashmir

Introduction

During the intervening night of the 3rd/4th of August, 1998 at around midnight Major Gaurav of the 9 Para Army Camp located at Balfiaz in village Sailan led four Special Police Officers [SPO's]—Mohammad Younis alias Tiger, Mohammad Rafiq alias Pathan, Maqsood Ahmad and Mohammad Akbar, all residents of Balfiaz or surrounding villages, along with 5-7 army personnel shot or axed to death 19 persons, 11 of whom were children in the ages from 4 to 15 years, and 5 women, including one in an advanced stage of pregnancy, in their home in Sailan¹³⁷. Sailan village is located at a distance of around 15 kilometers from Surankote town of the Poonch District of Jammu and Kashmir. The Army Camp in Balfiaz was located at a distance of 700 meters from the homes of the victims in Sailan with one picket at a distance of only about 200 meters from them. Of the 19 family members killed, 13 were female and 9 were male¹³⁸. According to a *suo-moto* 'spot inquiry' conducted by the State Human Rights Commission [SHRC] led by Justice Kuchai, a retired Judge of the High Court, a post-mortem of the victims conducted by Dr. Mumtaz Hussain of the Government Hospital, Surankote the day after the massacre revealed that the female victims may have been sexually molested and that the limbs of the victims had been amputated with axes.¹³⁹

The Conspiracy Leading to the Massacre

Of the 22 members of the families of Lassa Sheikh, Ahmad Din Sheikh and Hassan Mohammad in their homes in Sailan that night only 3 survived- Maqsood Ahmad, son of Lassa Sheikh, Mohammad Shabir son of Ahmad Din Sheikh and Abdul Ahad, son of Hasan Mohammad. The events leading to the massacre that emerge from the accounts of these three persons and other eyewitnesses are inextricably linked with the killing of SPO Zakir Hussain, a former militant turned informer for the Army who was attached to the 9 Para (Special Forces) Camp at Balfiaz and who had recruited 3 of the SPO's who perpetrated the massacre. Along with SPO's Mohammad Younis alias Tiger, Mohammad Rafiq alias Pathan, Maqsood Ahmad and Mohammad Akbar, Zakir Hussain participated in the *nakas* (cordon and search operations) led by the army personnel of the 9 Para Camp in Balfiaz in Sailan and surrounding villages.¹⁴⁰ On the afternoon of the 3rd of August 1998 Imtiyaz Ahmad, the eldest son of Lassa Sheikh, a teenaged militant with the Lashkar-e-Toiba [LeT], who had been active in the area for a few months as 'Major Gul', shot and killed SPO Zakir Hussain. Eyewitness to the killing of Zakir Hussain included Maqsood Ahmad,

younger brother of Imtiyaz Ahmad, and Mohammad Shabir, son of Ahmad Din, both survivors of the massacre. They saw a Major 'Gaurav' [probably an alias] along with 20-25 army personnel and other members of the police and SOG talking to Zakir's father at the site of his killing, expressing grief over his death and saying that Zakir's killing would cost Imtiyaz dear¹⁴¹. Other eyewitnesses recall Major 'Gaurav' saying that he would avenge Zakir's death by killing twenty persons of Imtiyaz's family before Zakir was buried.¹⁴²

Apprehensive that Imtiyaz's immediate family would be targeted and tortured by the Army, Ahmad Din, brother of Lassa Sheikh and Hassan Mohammad, cousin of Lassa Sheikh suggested that the family of Lassa Sheikh stay at their houses for the night, all located at walking distance from each other, while they made further plans for their safety. Upon this, Lassa Sheikh, his wife Zainab Begum and their daughter Tanveera Kausar went over to Ahmad Din's house where Ahmad Din, his wife Saro Begum, his three daughters Yasmeen Akhter, Javeda Akhter and Shagufta Akhter and with his son Mohammad Shabir, then a student, were present. Lassa Sheikh's four children, his two daughters Jabeena Kausar and Shaheena Kausar, and two sons, Mohammad Iqbal and Maqsood Ahmad joined Hasan Mohammad's family at their home – Hasan Mohammad himself, his son Abdul Ahad, daughter-in-law Zaitun Begum and his four grandchildren Shaheen Akhter, Tahira Parveen, Showkat Mehmood and Sarfaraz Ahmad. Yasmeen Akhter, a 10 year-old child, who had come to meet her uncle Mohammad Latief, son of Ahmad Din Sheikh, who had arrived from Saudi Arabia two days before the massacre, was also killed. Mohammad Latief was in Surankot when he heard of the killing of Zakir Hussain by Imtiyaz. Mohammad Latief came to know about the killing of 19 members of his family on the 4th of August 1998.¹⁴³

The Event of the Massacre

The following account of the massacre and its aftermath is reconstructed from the testimonies of three eyewitnesses – Maqsood Ahmad, son of Lassa Sheikh, Mohammad Shabir, son of Ahmad Din Sheikh and Abdul Ahad, son of Hasan Mohammad, before the Investigating Officer of the CBI along with the testimony of Mohammad Latief son of Ahmad Din Sheikh.

At around 12: 30 am on the intervening night of 3rd/4th August, the family of Hasan Mohammad heard a knock on the door. The children were sleeping while the adults were still discussing the ramifications of the

137 Introduction, The Anatomy of Massacre, a Report on the Sailan Massacre by the Jammu Kashmir Coalition of Civil Society, 2014.

138 Ibid

139 Page 1, Report of the spot inquiry of the J&K Human Rights Commission, dated 09-09-1998 led by Chairperson Justice G.A Kuchai.

140 Section 161 statement of Maqsood Ahmad, son of Lassa Sheikh, Mohammad Shabir son of Ahmad Din Sheikh and Abdul Ahad, son of Hasan Mohammad taken under section 161, Code of Criminal Procedure, before the Investigating Officer of the CBI.

141 Mohammad Latief, son of Ahmad Din Sheikh says he came to know about the killing of Zakir while on his way back to Sailan from his cousin's place in Surankote. He too decided to return to Surankote when he saw Major Gaurav shaking hands with SP Sevak Singh en route.

142 Chapter 1 Locating the Sailan Massacre-'The Anatomy of Massacre, a Report on the Sailan Massacre' by the Jammu and Kashmir Coalition of Civil Society published in 2014.

143 Locating the Sailan Massacre, The Anatomy of Massacre, a Report on the Sailan Massacre by the Jammu and Kashmir Coalition of Civil Society published in 2014.

killings of Zakir Hussain. Abdul Ahad, son of Hasan Mohammad, opened the door when SPO Mohammad Younis alias "Tiger", forcibly entered the house while SPO Mohammad Rafiq remained at the door. Both SPOs were wearing army uniforms, were heavily armed and wore black bands over their foreheads. Mohammad Younis asked Abdul Ahad the whereabouts of Imtiyaz's family having checked and found his father's house locked. Here they tortured Mohammad Iqbal, brother of Imtiyaz who was deaf and mentally challenged regarding the whereabouts of Imtiyaz. The two SPOs then grabbed Maqsood Ahmad, another brother of Imtiyaz, by his collar and coerced him at gunpoint into taking them to the house of his uncle Ahmad Din, where the rest of his family was staying. SPOs urged the rest of the members to stay silent and left bolting the doors behind them. On the advice of his father, Hasan Mohammad, Abdul Ahad, escaped from the window and hid in the maize fields surrounding the house all night.

Upon reaching Ahmad Din Shiekh's house, the SPOs told Maqsood Ahmad, in Gojri, to ask his parents to open the door and not disclose anything else. Upon hearing Maqsood, both his father Lassa Shiekh, and his uncle Ahmad Din, accompanied by the rest of the family members came to the door and opened it whereupon the SPOs forced themselves inside. Meanwhile Maqsood Ahmad slipped away and hid in a vacant *kotha* (mud and wooden hut) nearby only to emerge in the early hours of the morning, when the sun rose.

Mohammad Shabir, son of Ahmad Din, emerged from his room to find 4 SPOs Mohammad Younis (alias Tiger), Mohammad Rafiq (alias Pathan), Maqsood Ahmad and Mohammad Akbar, all of whom he recognized in the adjacent room. The SPOs assembled all ten present in the house in the kitchen and then took them into the house of Hassan Mohammad, from where they had come, in a single queue. Here Mohammad Shabir also saw 3-4 army personnel led by an army officer who asked Lassa Sheikh, the father of Imtiyaz Ahmad to identify himself. Upon this Lassa Sheikh stood up and said that after handing this son over to the police (in a case against Imtiyaz of hitting someone with a cricket ball) he did not know his son's whereabouts. SPO Mohammad Younis severely beat Lassa Sheikh with a baton and on the orders of the army officer, fired between his legs, upon which Lassa Sheikh fell down. Seeing this, Lassa Sheikh's brother, Ahmad Din intervened and this led to a scuffle between Ahmad Din and Mohammad Younis, and firing started. Mohammad Shabir, who was close to a door slipped away and also hid in the maize fields for the rest of the night.

All three eyewitnesses who managed to slip away say they heard "thousands" of bullets being fired and the crying of their family members after which they saw 10-12 army and police personnel with torches leave the house and exit towards the side of the road. They stayed outside the entire night as they had identified the SPOs, knew the SPOs would recognize this fact and feared retaliation. In the morning, Mohammad Shabir, who had survived the massacre was the first to enter the house from a window as the Army/Police had

bolted the door of the house from outside. Upon entering, he found 19 members of his family lying dead. There were "hundreds" of empty cartridges and live bullets on the floor. An axe was found hanging from the hip of Javeda Akther, hammered so deep into her leg that her entire body was lifted when her relatives tried to pull it out. On seeing his entire family massacred, Mohammad Shabir started crying and on hearing him, Maqsood Ahmad and Abdul Ahad also came into the house.

Justice Kuchai who led the 'spot inquiry' of the SHRC visited Sailan fifteen days after the massacre, and was shown bullet-ridden walls, a blanket as well as utensils with numerous bullet holes in Hasan Mohammad's house. In the morning after the massacre, the three surviving members left Sailan on account of firing from the 9 Para Camp at Bafiaz which they say was intended to disperse them and reached Surankot. Here they found around a thousand villagers already gathered after news of the massacre had spread.

The Aftermath of the Massacre

At the Surankot Bus Stand, the three survivors, along with a crowd of locals met the Deputy Commissioner, [DC] Sayeed Khan and the Senior Superintendent of Police, JP Singh where they asked the DC to shift the bodies of the deceased from Sailan to Surankote because they had heard through police sources, that the army was planning to burn the bodies in the houses where they had been killed. SSP JP Singh informed the DC that this wasn't possible due to an ongoing encounter, which the victims believed was in fact the army firing singlehandedly. The DC and SSP accompanied the survivors to Sailan, where the dead bodies of the victims were loaded in two vehicles. The bodies were guarded by relatives armed with rods in the Tehsil Complex during the night of the 4th/5th and buried the next day on the 5th of August at the Darul Shaheed in Surankot after postmortem by a team of doctors at the Sub District Government Hospital in Surankote. Notably, at around 1 am in the night of the 4th/5th of August, SP Sevak Singh approached the survivors with instructions to bury the dead, which they refused and after which there was stone pelting and protest. The town area of Surankote was completely sealed by the district administration on the day of the burial. Even relatives of the deceased from Poonch and Rajouri were not allowed to join the burial.

A major portion of the population of Sailan, around 900 families, migrated in the aftermath of the massacre due to fear of the Army/Police. Many including the survivors stayed at the Tehsil Complex for nearly two months. The SHRC 'spot inquiry' noted that the displaced persons were living in 'pathetic plight', 'like cattle'- around thirty of them crammed in one bare room with a cement floor. The dwellers of the Tehsil complex were provided relief items by the district administration for the first week only.

In the first week of taking up residence at the complex, the upper story where the survivors and their relatives lived was burnt in an IED blast. The survivor's suspect this (along with the other acts of intimidation) were the handiwork of SP Sevak Singh. In the days after the massacre, SP Sevak Singh threatened two of the

survivors, Abdul Ahad and Maqsood Ahmad with murder in case they revealed the involvement of Army/Police in the killing of 19 of their relatives in the presence of the Numberdar (village head) Faiz Hussain. On a separate occasion, Maqsood Ahmad, brother of Imtiyaz Ahmad was called to the Camp of the Special Operations Group at the High School in Sailan and told that he should stop pinning the blame for the massacre on the Army/Police because it was in fact his brother Imtiyaz who had killed all their relatives. As a result of such intimidation, both Abdul Ahad and Maqsood Ahmad did not testify before SHRC at the Dak Bungalow, despite going there to do so, because of the presence of SP Sevak Singh.

Legal Proceedings in the Sailan Massacre case

On 4 August 1998, a First Information Report [FIR] No. 122/98 was lodged by the local police against *namaloom bandook-bardar* or unknown gunmen, at the Police Station in Surankote under sections 122, 122B, 121, 302, 449 and Section 3 Enemy Agent Ordinance of the Ranbir Penal Code [RPC]¹⁴⁴. Notably, the offences suspected include 'Waging or attempting to wage war against the Government of India', 'Collecting arms etc. with the intention of waging war against the Government of India' and 'Concealing with intent to facilitate design to wage war' and 'Illegal acts by enemy agents'.¹⁴⁵ Mohammad Younis alias Tiger and Mohammad Rafiq alias Pathan had been taken into custody by the local police in the days after the incident but were later released.¹⁴⁶

In 2011, nearly 13 years after the massacre, the three surviving eyewitnesses Maqsood Ahmad, son of Lassa Sheikh, Mohammad Shabir son of Ahmad Din Sheikh and Abdul Ahad, son of Hasan Mohammad filed Writ Petition No 1572/2011 in the High Court of Jammu and Kashmir at Srinagar urging the court to transfer investigations of FIR No. 122/98 from the local police to the CBI on account of lack of investigations by the police. The police closed the case as 'untraced'. A 'status report' filed by Assistant Sub-Inspector [ASI] Isher Dass of the Police Station at Surankote before the High Court at the behest of a petition filed by the survivors 'does not indicate' whether the *Ikhtitami*, a mandatory final report, was filed before the concerned Magistrate.¹⁴⁷

By an order in November 2012, the Jammu and Kashmir High Court at Srinagar directed the investigation to be transferred to the CBI. The CBI, nearly a year after the order, registered a case¹⁴⁸ in September 2013 and appointed Inspector Ashok Kalra as the investigating officer in the case of the Sailan Massacre. In the interim, in June 2013, the CBI in a 'compliance report' filed in response to petition against the CBI for non-investigation stated before the court that on account of 'facts and circumstances as

per FIR', the Sailan massacre was committed by 'Pak-trained militants' and that since terrorism related cases are not dealt with by the CBI but the NIA, the investigation of the Sailan massacre should be transferred to the NIA, questioning the rationale of the order assigning the investigation to the CBI in the first place in 2012. This position was not pursued subsequently by the CBI. Incidentally, the NIA was formed under the National Investigation Agency Act, 2008 and tasked with investigating offenses affecting the 'sovereignty, security and integrity of India'.

Four of those who perpetrated the massacre, Mohammad Younis, SPO in 1998 and Head Constable in 2013, Mohammad Rafiq Gujar, SPO in 1998 and Selection Grade Constable in 2013 with the 16 RR Camp in Draba, Maqsood Ahmad Khan, SPO in 1998 and Assistant Sub Inspector and Mohammad Akbar, SPO in 1998 and Selection Grade Constable in 2013 are all armed and posted in the area where the witnesses live. The accused, on numerous occasions, directly intimidated, harassed and threatened the witnesses. In October 2013, in the wake of CBI investigations, Army personnel from the 16 Rashtriya Rifles [RR], Draba Camp in Surankote, where Mohammad Rafiq Gujar is posted, approached the witnesses and questioned them on what they would be testifying to before the CBI with regard to the Sailan case. The personnel of the 16RR lined up the witnesses and their families outside their houses and their photographs were taken, harassing and humiliating the witness.¹⁴⁹

The investigating officer of the CBI visited the site of the massacre in Sailan and separately, in Jammu, recorded the statements of 3 persons who survived the massacre namely Maqsood Ahmad, son of Lassa Sheikh, Abdul Ahad, son of Ahmad Din Sheikh and Mohammad Shabir, son of Hassan Mohammad under section 161 and 162 of the Code of Criminal Procedure [CrPC]. The investigating officer also took the statement of Mohammad Afzal, son of Hassan Mohammad who was staying with his sister on the night of the massacre. The statement of Mohammad Latief, son of Ahmad Din Sheikh, was also recorded. He stated that he was attempting to return home on a bus from Surankote to Sailan, on the evening before the massacre, but had been forced to return to Surankote when passengers on the bus were asked to disembark from the bus, at the Bafiaz camp close to Sailan. The recording of statements in Jammu, 192 kilometers from Sailan, caused major inconvenience to those deposing before the CBI. Additionally, while the DC Poonch, on the request of the victims, allowed the applicants to keep weapons for their safety, no such provision was made for them while traveling to Jammu. A motorcycle mysteriously hit Mohammad Afzal, son of Hassan Mohammad, a day before his

144 First Information Report [FIR] No. 122/98 filed at the Police Station in Surankote in December 1998.

145 Ibid

146 Before the High Court of Jammu and Kashmir, Srinagar, Statement of Facts in Contempt Petition No. 488/2013 in Abdul Ahad & Ors versus Dr. Armandeep Singh, SSP, CBI Jammu.

147 Compliance Report/Application on behalf of the CBI in response to the orders of the High Court of Jammu and Kashmir dated 21-11-2013 and 3-6-2013.

148 Case No RCDST2013S0023 was registered by the CBI on FIR 122/98

149 Locating the Sailan Massacre, The Anatomy of Massacre, Report on the Sailan Massacre by the Jammu Kashmir Coalition of Civil Society published in 2010.

statement was recorded causing him serious facial injuries and scaring the other witnesses. Mohammad Latief was told by the Investigating Officer that there would be another opportunity to record his statement in detail, however, that opportunity has not arrived though more than one and a half years have passed since. After a year and a half during which the statements of only five witnesses were recorded, other witnesses to the massacre were not approached by the CBI.

Critique

In the SHRC report, Justice Kuchai contends that, 'the silence of the army' leads to 'positive conclusion' that 'Zakir's [SPO] associates', 'planned the attack' to take 'revenge' for Zakir's killing.¹⁵⁰ Yet the SHRC report also acknowledges that it stops 'short of any identification of the assailants' on account of 'inquiries against armed forces' matter 'not falling within its jurisdiction' but later adds that it found 'no direct evidence' against any 'particular person'. Instead, the SHRC recommends that the Home department issue directions to the SP Poonch to identify the 3 SPOs, despite the identification by eye witnesses, evidence to the connivance of the SP in the direct intimidation of witness and attempts to destroy the dead bodies, and obliterate the evidence.

While Justice Kuchai is keen on those with 'any knowledge' of the events of 3rd /4th of August, 1998 to give 'oral' statements for a 'fact finding report' to be prepared during the 'spot inquiry' this apparently is conveyed through notices such as the 'written hand notice' that had been plastered on the wall of the [vacant] house of the deceased Hasan Mohammad Sheikh. SP operations Sevak Singh who is 'orally directed' by the Commission to convey this information to the army in turn 'expressed that the army will not participate in the inquiry' but wanted an 'independent inquiry' to be conducted.

Though out the report, Justice Kuchai makes several veiled references to 'oral inquiries' on behalf on the commission and 'orally expressed' fears from the eye-witnesses, yet it examined only six witnesses-Hassan Mohammad Shiekh, Aftab Azad, Mohammad Shabir, Mohammad Rafiq Shiekh, Mohammad Afzal and Abdul Karim Shiekh attributing paucity of depositions before the commission to 'orally expressed fears'. On account of the deponents expressing a fear for their lives because of the presence of the Army/SPOs, Justice Kuchai sees fit to 'orally direct' the SP JP Singh to provide security to the witnesses.

In a reduction of justice to subsistence level compensation, the victims were paid ex-gratia relief of Rs 100,000, despite SHRC recommendation they be paid an amount of Rs 500,000 on humanitarian grounds. Three of the surviving eye witnesses Maqsood Ahmad, son of Lassa Sheikh, Mohammad Shabir son of Ahmad Din Sheikh and Abdul Ahad, son of Hasan Mohammad received employment on compassionate grounds under the Statutory Rules and Order [SRO] No. 43.

In a glaring absurdity, though the depositions of the witnesses before the CBI clearly indicate the role of Major Gaurav of the 9 Para Camp at Balfiaz and the four (then) SPOs, Mohammad Younis, Mohammad Rafiq Gujjar Maqsood Ahmad Khan and Mohammad Akbar, in the Sailan massacre in 1998, yet the case filed by the CBI in 2013 parrots the FIR filed by the local police station in Surankote in 1998 and obfuscates through the use of the 'suspected offenses' consisting primarily of 'waging war against the Government of India', the identity of the perpetrators and concludes that they are in fact 'Pak-trained' militants.

The Morahra Bachai Massacre

While the massacre at Sailan is manifestation of the violence inherent in relationships between agents of state power and those not protected by it, it also unveils a varying spectrum of power embodiments centered around the Army camp; all comprising the apparatus of impunity in Kashmir, from the armed Special Police Officer entrenched in the local [with powers beyond those stipulated in the law], to higher up's like the Deputy Superintendent of Police and the Army Major. The Sailan Massacre is not an isolated incident; the massacre at Mohra Bachai exactly a year after the massacre at Sailan highlights the customary nature of such violence with the perpetrators employing a habituated modus operandi, a premeditated and planned massacre of an entire family, including their children, in response to the suspected killing of the mother of an SPO by a 'militant' member of the victim family. The motivation behind the massacres appears similar; the accused are the same – army, SPOs and police officials such as SP J.P. Singh. Finally, it appears that the result is also the same: impunity.



Zahida Parveen, the sole survivor of the Mohra Bachai massacre

150 Locating the Sailan Massacre, *The Anatomy of Massacre*, a Report on the Sailan Massacre by the Jammu Kashmir Coalition of Civil Society published in 2010.

A brief outline of the Mohra Bachai case makes it clear that the massacre – mass punishment by death – was the *modus operandi* of the State as a matter of policy in 'counter-insurgency' operations. On the night of June 29, 1999, fifteen persons, all members of one joint family, including six children were massacred in their home in Mohra Bachai, a village 5 kilometers away from Surankote, Poonch in the Jammu region of Jammu and Kashmir. Six of those killed were females, nine were male. It later emerged from the dying declaration of SPO Gani, that the massacre was jointly planned and perpetrated by Special Police Officers [SPO], Superintendent of Police [SP] J.P. Singh, Hawaldar Mushtaq Shah and other personnel of the army in a secret meeting held led by J.P. Singh, military intelligence and SPOs Yasir and Chavhan in a house occupied by SOG in Poonch. It was also emerged that one of the SPOs, Yasir, who was the first to open the fire upon the family members, massacred the family because his mother Sarwar Jan, was shot dead by Imtiyaz, one of the sons of Azam Khan, on suspicion of spying for the army and the SOG a year earlier¹⁵¹. The family also learned that 11 SPOs, 13 soldiers from 9 Para Camp at Balfiaz participated in the massacre. According to their neighbour's, a cordon was established with 4-5 army personnel deployed outside every house in the area, preventing people from moving out of their houses.

The persons who were killed on that night were: Zahida's father-in-law Azam Khan, his son's Nisar, (to whom Zahida, the sole survivor of the massacre, was married), Yasir, 13, Mushtaq, and daughter Shaheena, 14; Zahida's brother Javaid, (who had came there to see his sister), Motiya Begam, sister-in-law to Azam Khan, Motiya's daughters Firdous and Ruksana, Ruksana's minor children Rashid and Washid. Also killed were Hameeda, daughter-in-law of Azam Khan married to Azam Khan's son Mushtaq and Nahida, daughter of Mushtaq. Ruksana and Hameeda were both pregnant and the babies in their wombs also died. Bashir Ahmad, a neighbor who visited the house to stay there for a night was also killed, so was another cousin Liaqat.

Zahida states that on the night of June 29, 1999 while the family members were asleep there was a loud knock at the main gate of the house at around 11:00 pm. Zahida's husband, Nisar, went out to check. He was instructed to open the door on grounds of their being serious complaints against the family. Only three of the men outside entered-two of whom were identified by Zahida after Liaqat, a cousin, turned on the light. These two were SPO Yasir and an ex-militant working for army who went by the alias 'Chavhan', both locals of the area. All were dressed in army fatigues and were carrying automatic weapons. They immediately instructed the family to assemble in two different rooms and said "*aap kay khilaf shikayat hai*" (there is a complaint against the family) and "*hum talashe kay leya aye hai*" (we have come here to

search the house). However, Azam Khan's son Khalid, his wife Khalida, and two cousins Showkat and Chengez Khan were sleeping in the next room. Luckily, they escaped as the perpetrators who inquired were told that there was no one in the next room. Following an argument between Yasir and Liaqat, the gunmen opened fire on the family members. In the shoot-out Zahida received bullets in her right leg and right arm. The shooting was followed by a deafening silence, which was broken by a conversation between the gunmen. Zahida, who pretended to be dead, heard one of the gunmen addressing SPO Yasir and saying "Yasir, what have you done!" to which Yasir responded, "We are here only for that" and then added "What has happened was right." The gunmen, before leaving the spot, threw gunpowder in and around the house to destroy the bodies of the massacred and set the house on fire. The injured Zahida, managed to escape from the burning house. Khalid, Zahida's brother-in-law, his wife Khalida, and two cousins Showkat and Chengez Khan broke open the door and survived. All the dead were burnt in the fire. Later the bodies were buried in a mass grave at Surankote in the presence of the concerned Deputy Commissioner, Superintendent of Police and Deputy Superintendent of Police.

Khalid registered FIR No 66/1999 at the Surankote police Station; The FIR states that "unknown gunmen" in "army fatigues" carried out the massacre. Post Mortem Examination Report by the J & K Health Department, Jammu signed by Dr. Sharief Mohammad Nisar, Mohammad Akram Khan and Mohammad Fazal Khan is of the opinion that "the deceased... died as a result of gun-shot injury and the burns are post-mortem." In communication dated 12 March 2008, the Senior Superintendent of Police [SSP], Poonch writes to the Inspector General of Police, Jammu that the First Information Report [FIR] No. 66/1999 registered at the Police Station at Surankote was closed against three absconding accused on 2 November 2001.

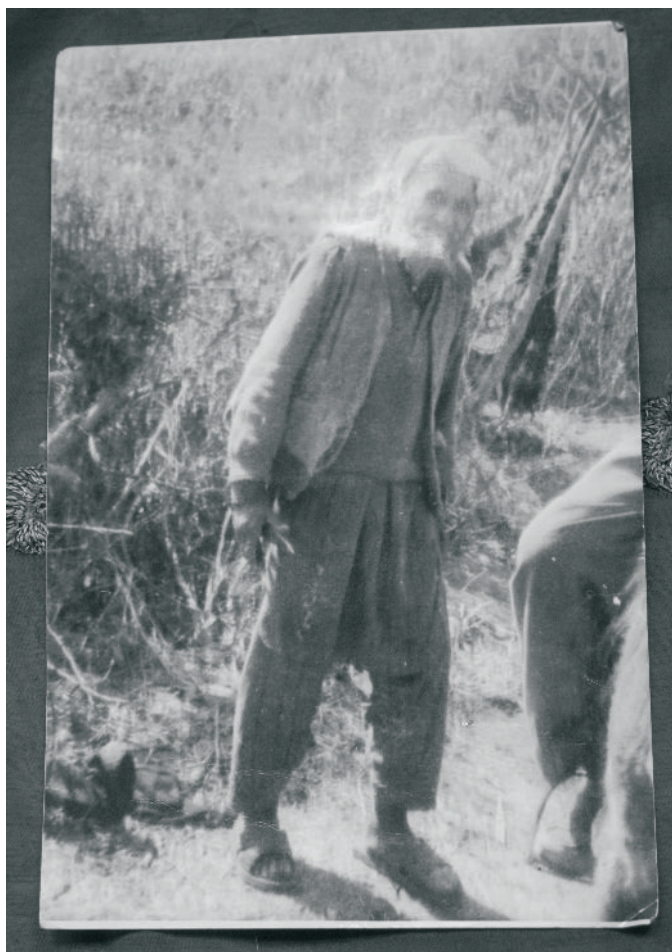
Zahida was hospitalized at Jammu for six months and delivered a baby there. Her leg was operated upon six times during her stay in the hospital. The amount spent was pooled from general public, in addition to Rupees 100,000 sanctioned as ex-gratia relief by the government. The government provided her accommodation in a government quarter, as her home was burnt down. For past 15 years she has been living there but was forced to vacate the house in August 2015 under pressure from the police and Tehsildar, Surankote.

The status of the charge sheet filed is unclear. SSP J.P. Singh alleged to be responsible for both the Sailan and Mohra Bachai massacres has been promoted and is currently serving as Inspector General Police (IGP Traffic).

151 Statement of Zahida, the sole survivor of the Mohra Bachai massacre, to our researchers.



A memorial of those killed in the Brakpora and Pathribal Massacres' at the Martyr's Graveyard in Brari Angan, Islamabad.



Jumma Khan, father of Shakoor Khan in a photo taken a few months before the Pathribal 'fake encounter' in March 2000.



The burnt dead body of Jumma Khan, father of Shakoor Khan taken at the time of his exhumation of in April 2000.

E. CHITTISINGHPORA, PATHRIBAL, BRAKPORA MASSACRES', ISLAMABAD DISTRICT, 2000

TIMELINE

Date	Event
20 Mar 2000	Massacre at Chittisinghpora, 36 persons shot dead
20 Mar	FIR No. 85/2000 filed at P/S Achabal in Chittisinghpora massacre
21 Mar	Mohammad Yaqoob Wagay arrested on suspicion of involvement in Chittisinghpora massacre
23/24 Mar	All five victims of Pathribal abducted by Police or by personnel of 7RR Camp at Khundroo
25 Mar	'Fake Encounter' at Pathribal
25 Mar	FIR No. 15/2000 filed at P/S Achabal in Pathribal 'encounter'
26 Mar	FIR No. 16/2000 filed at P/S Achabal in Pathribal 'encounter'
28 Mar	Families of two Jumma Khans file applications for exhumation of bodies in the office of the Deputy Commissioner
3 Apr 2000	Eight persons killed by CRPF/STF firing on protest at Brakpora
3 Apr	FIR 93/2000 filed at P/S Anantnag in Brakpora killing
6/7 Apr	Dead bodies of those killed in Pathribal exhumed
11 Apr	FIR No's 98/2000 and 99/2000 filed in P/S Anantnag in Pathribal 'encounter'
17 Apr	Pandian Commission instituted to investigate firing at Brakpora
17 Jun -10 Oct 2000	Pandian Commission gathers testimonials from witnesses.
2 Sep 2000	Police arrest Pakistani nationals Mohammad Suhail Mailk and Wasim Ahmad
27 Oct 2000	Pandian Commission files a report before the government of Jammu and Kashmir
15 Mar 2002	Government appoints Kuchai Commission to look into repeated fudging of samples in the Pathribal fake encounter
14 Feb 2003	CBI files cases in Pathribal fake encounter after being requested and permitted to take over investigations
9 May 2006	CBI files charge-sheet against Ajay Saxena, Brijendra Pratap Singh, Sourabh Sharma, Amit Saxena, Idrees Khan and others
10 Aug 2011	Delhi Sessions Court finds no evidence against Mohammad Suhail Mailk and Wasim Ahmad
1 May 2012	Supreme Court allows the army the option of a court-martial in Pathribal
29 May	Delhi High Court acquits Mohammad Suhail Malik and Wasim Ahmad and orders for the two to be deported.
27 Jun 2012	Court of the CJM Srinagar chooses not to resist the option of the Court Martial in Pathribal.
11 Jan 2013	Supreme Court dismisses petition filed against High Court order acquitting Mohammad Suhail Malik and Wasim Ahmad
11 Mar 2013	Families of victims in Pathribal depose before the Summary of Evidence conducted by army
12 Mar	Families of victims in Pathribal depose before the Summary of Evidence conducted by army
20 Jan 2014	Summary of Evidence finds no evidence against the five accused in Pathribal fake encounter
30 Jan	Nazir Ahmad Dalal, uncle of Zahoor Ahmad Dalal killed in the Pathribal 'fake encounter' seeks a copy of the Summary of Evidence from the Army.
28 May 2014	In CBI v/s Brig Ajay Saxena and other, Court of the CJM, Srinagar adjudicates that effectual proceedings were conducted by the army in the Pathribal case and dismissed the application of Nazir Ahmad Dalal.

Introduction

On 20th March 2000, at around 8:00 p.m male members of the Sikh community in Chittisinghpura, a village in the Islamabad¹⁵² district of Kashmir, were forced to come out of their residence and gather at the Samdhan Hall Gurdwara by around fifty uniformed gunmen carrying sophisticated firearms.¹⁵³ The villagers were taken to an open space and thirty-six were shot dead at point-blank range in a cold-blooded massacre¹⁵⁴. The massacre of Sikhs at Chittisinghpura took place while then US President, Bill Clinton, was on a tour of India- the first visit by a United States President to India in 22 years.

Five days later, on 25 March, 2000 the Senior Superintendent of Police [SSP], Anantnag Farooq Khan, in the presence of then Union Home Minister L.K. Advani held a televised press conference announcing that five "Pakistani militants" responsible for the massacre at Chittisinghpura had been killed in a "joint operation" mounted by the 7th Rashtriya Rifles [RR] and the SOG of the Jammu and Kashmir Police in the forests near Pathribal, also in the Anantnag district of Kashmir.¹⁵⁵ A CBI report into the encounter later revealed that Commanding Officer, Colonel Ajay Saxena, Company Commander, Major Bragendra Pratap, and Major Sourabh Sharma, all of the 7 Rashtriya Rifles [RR] Camp located at Khundroo, Islamabad planned and led operation "Swift" based on information obtained from the interrogation of a Mohammad Yaqoob Wagay - arrested by the police a day after the massacre at Chittisinghpura for his possible role in the massacre. A "Situation Report" prepared by the General Staff Officer of 1 Sector RR recommended Colonel Ajay Saxena and Major Bragendra Pratap Singh for commendation for their role in the 'operation'.¹⁵⁶

On the 3 April 2000, at around 2 pm, two thousand civilians-men, children and seniors from the villages of Brari Angan and Utrasoo, including the family members of those killed in what came to be known as the Pathribal 'fake encounter' were en route to the office of the Deputy Commissioner [DC] at Anantnag in a peaceful procession. They raised slogans demanding justice for those killed and the return of the dead bodies of those killed in the 'fake encounter' to the victim families. After crossing Bulbul Nowgam at Brakpora Chowk, three personnel of the CRPF and four of the SOG of the Camp stationed at Brakpora opened fire on the crowd without any provocation and killed eight civilians, injuring thirty-five others.

Pathribal: Massacre as 'Encounter'

On the day of the 'fake encounter' at Pathribal, Molvi

Qasim Ali, a villager from Pathribal who had seen the dead bodies sent news to his nephew Abdul Rashid Khan in Brari Angan that he had recognized the dead body of one of the persons killed (claimed to be of a foreign militant) to be that of Abdul Rashid's father, Jumma Khan, a fifty year old member of the Gojar community. It emerged that two persons, both named Jumma Khan had been abducted from their homes in Brari Angan, a village around ten kilometers from Pathribal, in the middle of the night by armed and uniformed personnel of the 7RR Camp at Khundroo, around two kilometers from Brari Angan, in the presence of their family members.¹⁵⁷

Subsequently, all five persons killed in the encounter at Pathribal were civilians from Brari Angan, Momimnabad and Halan-Verinag, all in the Islamabad District of Kashmir within the "operational jurisdiction" of both the 7RR Camp at Khundroo and the SSP, Anantnag Farooq Khan.¹⁵⁸ All five had been abducted by either the armed forces or the police in the intervening night of the 23 /24 March, 2000, held captive for the entire day of the 24th of March, taken into a Kotah (wooden and mud hut), atop a small hillock known as Zoontengri in Wuskah, Pathribal in the early hours of the 25 March, 2000, where they were then shot dead and then burnt or dismembered to obfuscate their identity¹⁵⁹. Following this, their dead bodies were dressed in "chitra wardi" (army fatigues) and buried in different locations within two to three kilometers of the spot of their killing. The families of two victims, Mohammad Yusuf Malik and Bashir Ahmad Bhat, both of Halan-Verinag, came to know of their fate through photographs of the "foreign militants" published in the newspaper Hind Samachar. Shakoor Khan, son of Jumma Khan who was killed in Pathribal, says that in the intervening night of 24 / 25 March, 2000 hundreds of uniformed and armed army personnel arrived at their house at 1 am in the night, some of whom broke the door, entered and took Jumma Khan on the pretext that he would "guide them" to their Camp at Utrasoo, around 2 kilometers from Brari Angan and that he would return to his family in half an hour. In the early hours of the morning, Shakoor Khan came to know that another Jumma Khan, the father of Abdul Rasheed Khan, had also been kidnapped in the night. Shakoor along with two others headed to the Achabal Police Station where the Station House Officer made a note in his register and told him to come to the Camp at Utrasoo at noon the next day to know father's whereabouts. At the Camp, Shakoor Khan was told that all the SHOs were at Pathribal and he waited until 5pm when the police and the army arrived at Utrasoo; SSP Farooq Khan told

152 As explained in the previous chapter, we use 'Islamabad' to refer to the district and the town. However, as this chapter is informed by documents issued by the Jammu and Kashmir Government and other state agencies, we reproduce the name of the district with regard to designation, camp location etc. as in the documents.

153 Report of the Pandian Commission on Brakpora killing also investigates Chittisinghpura as a precursor to the Pathribal and Brakpora massacres.

154 Ibid

155 Final Report of the CBI filed with the Special Magistrate, CBI, Srinagar under Section 173, Code of Criminal Procedure.

156 Final Report of the CBI filed with the Special Magistrate, CBI, Srinagar under Section 173, Code of Criminal Procedure.

157 Statement of Abdul Rashid Khan, son of Jumma Khan, resident of Brari Angan to the researchers of this report.

158 Final Report of the CBI filed with the Special Magistrate, CBI, Srinagar under Section 173, Code of Criminal Procedure.

159 Ibid

Shakoor Khan that they needn't worry, as those killed in the 'encounter' were "five young Pakistani militants" whose bodies had been burnt. At this point, the families suspected foul-play.¹⁶⁰

Abdul Rasheed Khan, son of Jumma Khan says that, "the Army targeted the two Jumma Khans because they had long beards and wore dastars (turbans)-the beard and dastar is a part of our cultural and religious tradition but for the army it meant the two could be passed off as Pakistani militants". Later he adds, "The dead bodies of the two Jumma Khans were burnt because the army and the police knew that locals of the area would recognize them but by the grace of Allah, a part of the henna-tattooed beard of my father survived."

Investigations and Legal Proceedings

Arrests of "Pakistani Militants" in Chittisinghpura

Under public and political pressure to take action, personnel of the Police Station in Shergadi, Srinagar arrested Pakistani nationals Mohammad Suhail Maik and Wasim Ahmad on the 2 September 2000 holding them to be "Pakistani militants" responsible for the Chittisinghpura massacre on the basis of confessions obtained from them while they were in police custody¹⁶¹. Criminal proceedings against the said "militants" were conducted first in the courts in Islamabad, then by the District court in Delhi. On the 10 August 2011, the Delhi Sessions Court held that "there is no incriminating evidence against accused persons." Following this, a Delhi High Court decision on the 29th of May 2012, which acquitted both accused also noted that "there was no legal evidence at all" as to the involvement to the two and gave directions for them to be deported to Pakistan.¹⁶² This decision was later, 11 January 2013, confirmed by the Supreme Court. Notably, the Delhi High Court declared the Karamjit Singh, an eyewitness to the massacre at Chittisinghpura, who managed to escape after being rounded up by gunmen in army uniform, as having turned "hostile" because he had "denied" that the two accused persons "were amongst the persons he had met that day." On the night of the massacre, Karamjit Singh had entered the Gurdwara, Samdhan Hall where he had found the villagers sitting in a line but had been let go of when he urged the "Commanding Officer" of the gunmen to let him go tend to his sick child. The testimony of another witness, Reish Ahmad Sufi, a bus conductor,

consisted mainly of him saying that, "some persons had long beard whereas others had a small beard." Two other witnesses were declared untraceable.

Pathribal: CBI Investigations, Chargesheet and Summary of Evidence

In the Pathribal 'fake encounter' the Government set up a Special Investigation Team [SIT] led by then SSP Farooq Khan, despite evidence pointing to his active involvement in planning, execution and destruction of evidence in the Pathribal, as well as his responsibility and consequently his culpability in his position as the SSP with whom the authority of the SOG responsible for the killings at Brakpora rests.¹⁶³ Subsequently, the investigations were handed over to the CBI.

The CBI presented a report in the Court of the Chief Judicial Magistrate [CJM], Srinagar on the 14 February 2003, having gathered evidence from seventy-one persons, including the families of the victims and held that the encounter at Pathribal "was not a genuine encounter".¹⁶⁴ The CBI charge-sheeted five officers of the 7RR Camp at Khundroo and "others" of the 7RR with entering into a criminal conspiracy during the period between 21 March and 25 March 2000 to abduct civilians, kill them and then project them as responsible for the massacre at Chittisinghpura. The inquiry showed that Pathribal 'fake encounter' had been planned and executed by the Army and the Police in a "joint operation" led by the accused. Notably, the CBI reports details how the seizure memo showing recovery of arms and ammunitions from the 'foreign militants' was falsified [and this seizure memo later contradicted with the army's "issue voucher", when arms/ammunition purportedly obtained from the militants were actually handed over to the police]. Moreover, two civilian witnesses were forced to "witness" the preparation of a seizure memo of arms/ammunitions. These two later stated that no seizure memo was prepared before them and they were forced to sign on blank papers. When the CBI questioned the personnel of 7RR on the point that at least three of the deceased were badly burnt whereas weapons claimed to have been recovered from them were not, the accused were of the opinion that five 'militants' might have thrown away the weapons while trying to save themselves in the fifty square foot *kotah*.¹⁶⁵

Despite the fact that the families of those killed in Pathribal had identified them at the time of the

160 Statement of Shakoor Khan, son of Jumma Khan, resident of Brari Angan to our researchers.

161 Judgment of the Delhi High Court pronounced on 29 May 2012, State of Jammu and Kashmir versus Wasim Ahmad @ Abu Mohamamad & Anr

162 Judgment of the Delhi High Court pronounced on 29 May 2012, State of Jammu and Kashmir versus Wasim Ahmad @ Abu Mohamamad & Anr.

163 Though the report of the Pandian Commission cites government order [Home 228-ISA of 2000 dated March 23, 2000] which makes clear that "the authority over the SOG would rest with the SSP." Our researchers filed an RTI in response to which we received Government Order Home 224-ISA of 2000 dated 23.05.2000. This order states that the SOG will "function under control of concerned District Superintendents of Police who will in turn be accountable to the Deputy Inspector General of the Police of the Range." [Emphasis added] Also attached is a later order-Home-78-ISA of 2003 dated 24.02.2003, which states, "The post of SP (Ops) shall hereafter be re-designated as Additional SP of the district" and that "All counter insurgency operations in the respective districts shall be carried out under direct supervision of the District SP." In effect this means the position of the Pandian Commission on this matter is changed with dated 23.05.2000 and later reaffirmed with order dated 24.02.2003.

164 Final Report of the CBI filed with the Special Magistrate, CBI, Srinagar under Section 173, Code of Criminal Procedure.

165 Wooden and mud hut, part of the temporal description of a Gojar village.

exhumation on the 6 and 7 April, 2000¹⁶⁶ in the presence of the District Commissioner, the Chief Judicial Magistrate, the Law Minister of the State, other senior officials and politicians and hundreds of local people, the taking of blood samples from the deceased as well as their families to establish DNA evidence of kinship was deemed necessary. Blood samples taken were fudged twice and it was only after the scientific officers from the concerned laboratory in Hyderabad and Kolkatta visited Islamabad and started the entire process of exhumation and sample collection afresh that results “fixing identities” of the victims to their relatives were obtained. On 15 March 2002, then Chief Minister, Farooq Abdullah appointed an a one man Commission of Inquiry led by retired High Court Judge G.A Kuchai to investigate the repeated fudging of samples. Reportedly, the Kuchai Commission opined that the forensic team and police officials had fudged samples. The government suspended the police officers, but subsequently reinstated them.¹⁶⁷

Shakoor Khan, son of Jumma Khan, describes the process of the exhumation of Mohammad Yusuf Malik from Halan-Verinag, killed in Pathribal, and says, “At the time of the exhumation, Ghulam Nabi was asked what the ‘*nishani*’ [identifying mark] of his brother was, to which he responded that his brother had long hair, wore white clothes and that his hands were tattooed with henna. When the grave was dug, the dead body was dressed in army fatigues but was not burnt. When we saw his body, we were afraid and wondered if he was in fact a militant but underneath the fatigues we saw his white clothes and his henna tattooed hands. Ghulam Rasool took out a photo of him from his pocket and the dead body was of course that of his brother”¹⁶⁸. In May 2012, in the Pathribal case [*General Officer Commanding v. The CBI*, (2012) 5 SCR 599]; the Supreme Court cited Section 7 of the Armed Forces Special Powers Act [AFSPA], 1990, which prohibits the institution of any legal proceedings against any army personnel without prior sanction of Government of India – Ministry of Defence and Ministry of Home Affairs. The court was of the view that since all judicial proceedings are inherently legal and that “institution” of a “prosecution starts when cognizance of an offense is taken”; that therefore no court may take “cognizance” of a crime committed by the armed forces while on “official duties” without seeking sanction from the government. The judgment goes on to say that the ascertaining whether an act is done in

performance of duty or not is not the prerogative court but “is to be determined by the competent authority”.¹⁶⁹ On the matter of conduct while on duty, the Directorate General of Military Operations says that the instructions on the employment of the “Army in Aid of Civil Authorities” for the “maintenance of law and order and for counter insurgency operations” are circumscribed by “principles of ‘Minimum Force’, ‘Impartiality’, ‘Good Faith’ and ‘Necessity’”¹⁷⁰. While the court notes that the duty of public servant is subject to an obligation of “good faith”, the Supreme Court Judgment describes good faith as, “an allegiance to superior authority”¹⁷¹ understood within ideals of “genuine belief”.¹⁷²

The ruling of the Supreme Court effectively removed all control over proceedings from the courts and made the obtaining of sanction binding across all cases, even in ones where there can be no question of the armed forces acting in relation to official duties such as the ‘fake encounter’ in Pathribal. The Supreme Court then allowed the army the option of a court-martial, which the CJM chose not to resist. Ultimately, the army only carried out a Summary of Evidence, found no evidence against the five accused persons indicted by the CBI, and the lower court accepted this position on 28 May 2014.

The Report of the Pandian Commission

In the Brakpora killings, a one-man Commission of Inquiry was instituted on 17 April 2000 to be led by retired Justice of the Supreme Court S.R. Pandian. The Pandian Commission gathered testimonies of fifty-one persons including at least eleven people who had participated in the procession, five shopkeepers at Brakpora Chowk who were eyewitnesses to the firing, one person who was purchasing kerosene from the co-operative society nearby and one who was waiting at the Bus Stand at the Chowk, also an eyewitnesses to the firing. It also received the testimonies of four doctors, two scientific officers and ten police officers including then SSP Farooq Khan, ASI Bashir Ahmad and DSP Tejinder Singh. In addition to this, the commission received the affidavits of sixty-nine civilians including thirty-nine civilians who had participated in the protests, seventeen shopkeepers at Brakpora Chowk who were eye-witnesses to the event. Five SOG personnel and ten of the CRPF also submitted their affidavits before the commission. Neither the SOG nor the CRPF cooperated with the investigations of the commission and did not depose

166 Report of the ‘One Man Commission of Inquiry’ of Justice S.R Pandian on the Firing Event at Brakpora/Bulbul Nowgam (Anantnag) on 3rd April, 2000.

167 ‘14 years of twists and turns’ published in the Indian Express on 25.01.2014. This timeline can be accessed at <http://indianexpress.com/article/india/india-others/14-years-of-twists-and-turns/2/>

168 Statement of Shakoor Khan, son of Jumma Khan, resident of Brari Angan to the researchers of this report.

169 Judgment of the Supreme Court of India, General Officer Commanding versus CBI & Anr on 1 May, 2012, Page 5.

170 Ibid

171 Judgment of the Supreme Court of India, General Officer Commanding versus CBI & Anr on 1 May 2012, Page 6.

172 Judgment of the Supreme Court of India, General Officer Commanding versus CBI & Anr on 1 May 2012, Page 6 Paragraph 47, “Good faith means that which is founded on genuine belief and commands a loyal performance. The act which proceeds on reliable authority and accepted as truthful is said to be in good faith. It is the opposite of the intention to deceive. A duty performed in good faith is to fulfill a trust reposed in an official and which bears an allegiance to the superior authority. Such a duty should be honest in intention, and sincere in professional execution. It is on the basis of such an assessment that an act can be presumed to be in good faith for which while judging a case the entire material on record has to be assessed.”

before it. Despite being summoned by the Pandian Commission the SOG/CRPF “refused to subject themselves to cross-examination”.¹⁷³

The commission opined that a total of three personnel of the SOG and four personnel of the CRPF including ASI of the SOG, Ashok Kumar and Commander R.P Roy of the CRPF deliberately came out of the camp with fully loaded militarized weapons and indiscriminately fired, a total of twenty rounds of ammunition, on a procession that included children and seniors. The protest, which originated at Brari Angan reached Brakpora after passing through four-army check posts including ones at Utrasoo, Khundroo and Bulbul-Nowgam on route to Brakpora, all at a distance of around one kilometer from each other. Eyewitnesses saw the protest being monitored closely by twenty to twenty five policemen who were at the end of the procession, including the SHO of Achabal, who tailed the procession from Khundroo onwards for a distance of about four kilometers. Moreover, of the eight persons killed, four were shot in the heads, three in the chest and one in the abdomen suggesting that the CRPF/SOG fired at them with the intention of killing them in stark contrast to the “accidental firing” defense mounted by the SOG/CRPF, which apparently took place while some “unknown masked gunmen from within the crowd” fired at the Camp while protestors turned “belligerent” and tried to “forcibly snatch rifles” from the SOG/CRPF personnel when their rifles “got automatically fired”.¹⁷⁴ Yet, it is understood that none of the SOG/CRPF personnel were injured in this “firing” or by “belligerent” acts of the protestors.

SHO Achabal says in his testimony to the Pandian Commission that “the reasons for such firing might have been to curb demands for exhumation of the deceased [in Pathribal]”.¹⁷⁵ This is in light of the fact that the entire village of the families of the Jumma Khans had protested at the office of Deputy Commissioner, Anantnag and filed an application for the exhumation of the bodies of the five persons killed on the 28th of March, 2000, three days after the encounter, when coincidentally, according to the villagers, four more persons had been abducted from Brari Angan by the 7 RR Camp at Khundroo but had to be released because of public protests of the locals.

Critique

The Chittisinghpura, Pathribal and Brakpora cases are part of a chain reaction set off by the massacre of thirty-six Sikhs by armed gunmen following which the army and police joined forces to plan a criminal conspiracy to massacre five civilians in an “encounter” and frame them as “foreign militants” responsible for Chittisinghpura.¹⁷⁶ The CRPF and SOG then massacred eight more civilians who were

part of a procession demanding justice for the Pathribal killings. Till date the government has not ordered a single high-level inquiry into the massacre at Chittisinghpura. Instead the police arrested two Pakistani nationals, on the familiar hypothesis of them being the “Pakistani militants” responsible for the massacre. In both Chittisinghpura and Pathribal, the state and its agencies including the armed forces and the police tried to falsely implicate persons who had no connection with the incidents whatsoever. The unwillingness of the state agencies to even conduct a proper inquiry into the Chittisinghpura massacre raises questions as to who the perpetrators are and why they are being shielded.

In Pathribal, while the CBI accepted that other personnel of 7RR were involved, only five personnel were charge-sheeted, including the Commanding Officer of the 7 RR Camp at Khundroo. However, a cursory reading of the charge sheet suggests that at least two columns of troops of the Petha-Dayalgam and Chatargul companies and “subordinate staff” of the 7 RR were involved, directly or indirectly in operation ‘Swift’. The CBI in the report says that “though the matter was pursued, thereafter, the 7 RR /Army did not make available the names and details of other personnel of the 7 RR who participated in the said encounter on 25.03.2000”¹⁷⁷. Despite this, there are at least five army officers whose role in the ‘fake encounter’ is clear from the report but who are not chargesheeted, they are: Captain S.S. Pathania, who signed the contrived “Issue Voucher” that accompanied the arms/ammunition-five AK-47 rifles and twelve magazines “recovered” from the “militants” and handed over to the police; Captain Puneet Dutta who sent a “Situation Report” on the encounter in the early morning to Victor Force detailing “recoveries” from the ‘foreign militants’, Colonel I.J Peoples who sent the “After Action Report” to the Head Quarters, Victor Force highlighting “numerous sightings of terrorists, including some in combat dresses...especially on the previous evening of the operation” and Brigadier Deepak Bajaj, who SSP Farooq Khan states was the person who informed him of the encounter. The CBI, however, has limited the case to only five army officials.

More pertinently, the CBI, ultimately, did not charge-sheet any officials of the Jammu and Kashmir police, whether Inspector Mukesh Kumar whose interrogation of Mohammad Yaqoob Wagay formed the basis of the ‘intelligence’ used to front the ‘fake encounter’, or SSP Farooq Khan, almost entirely on the denial of these police personnel of their involvement in the incident, this despite testimony incriminating the police from the families of the victims. For example, Abdul Rashid Khan, son of Jumma Khan, killed in the ‘fake encounter’ at

173 Report of the ‘One Man Commission of Inquiry’ of Justice S.R Pandian on the Firing Event at Brakpora/Bulbul Nowgam (Anantnag) on 3rd April, 2000.

174 Ibid

175 Report of the ‘One Man Commission of Inquiry’ of Justice S.R Pandian on the Firing Event at Brakpora/Bulbul Nowgam (Anantnag) on 3rd April, 2000.

176 Final Report of the CBI filed with the Special Magistrate, CBI, Srinagar under Section 173, Code of Criminal Procedure.

177 Final Report of the CBI filed with the Special Magistrate, CBI, Srinagar under Section 173, Code of Criminal Procedure.

Pathribal says that his relatives in Pathribal saw SSP Farooq Khan spraying petrol on the dead bodies. Nazir Ahmad Dalal, uncle of Zahoor Ahmad Dalal killed in the Pathribal 'fake encounter' holds that as per eyewitnesses, Zahoor was abducted by Assistant Sub Inspector [ASI] Bashir Ahmad in complicity with the government gunmen [Ikhwan] and a 'Sardar' Deputy Superintendent of Police [DSP].¹⁷⁸ ASI Bashir Ahmad of the Police Station, Islamabad, acknowledges in his testimony to the CBI that on receipt of a call from the Commanding Officer of the 7RR, Khundroo, he along with his staff went to the RR Camp and slept there on the intervening night of the 24th/ 25th of March, 2000. Additionally, when their fathers didn't return, the sons of the two Jumma Khans, Abdul Rashid Khan and Shakoor Khan both of whom went to the Achabal Police Station on the 24th of March 2000 to file a First Information Report regarding the abductions say that the police wrote something but refused to give them copies of the FIR because the police was hand in glove with the army.

Despite the gravity of the Pathribal case, the Summary of Evidence pertaining to the proceedings of the army court has not been made public in the spirit of transparency effectively rendering any proceedings in the army court completely opaque to public view. In Brakpora, while the Pandian Commission acknowledges that the firing at Brakpora by four CRPF and three SOG personnel of the Brakpora Camp was a "butchery" in which 8 people were killed, its recommendations pertain mostly to the granting of ex-gratia relief in varying amounts to those killed and injured or disabled in addition to instructions as to how the state may "manage" such processions in the future. Even though the Pandian report does not call for the prosecution of the accused [it recommended only their dismissal], it was not made public. Reportedly, in the Brakpora case, neither the four personnel of the CRPF nor the three members of the SOG were arrested or detained for questioning.¹⁷⁹ It is also reported that Government of India denied permission for prosecution of Central Reserve Police Force personnel who fired on the protesters.¹⁸⁰ Though the report of the Pandian Commission cites government order [Home 228-ISA of 2000 dated March 23, 2000] which makes clear that "the authority over the SOG would rest with the SSP." Yet the Commission fails to hold SSP Farooq Khan responsible for the killing in Brakpora, though the SSP, in his position of authority over the SOG had effective control of the area.¹⁸¹

All these instances point to the involvement of the police apparatus in least the criminal conspiracy leading to the 'fake counter' and the destruction of

evidence. The army has consistently used the role of the police in the abduction at Pathribal as a shield to abdicate themselves from responsibility for their crimes. After fifteen years, the failure of the state in even unearthing the role of the police let alone providing a modicum of justice points to how the state has consistently used the legal process to provide cover for the culture of impunity in which the armed forces in Kashmir operate.

While a large part of the Statist political discourse concentrates around Armed Forces Special Powers Act, it is the the court-martial system, part of the army and para-military acts and rules, which actually ensure impunity when the armed forces are pushed—by public pressure or other political reasons—to take action. These proceedings do not always result in an actual court-martial, such as in the Pathribal case where the army carried out a summary of evidence and then found that there was no requirement for a court-martial.

Meanwhile, far from receiving justice, the victims of the crimes committed by the armed extensions of the state as well as their relatives are subject to further violence embodied in the legal process itself. As Shakoor Khan, son of another Jumma Khan killed in Pathribal says, "We demanded, through the press, that the trial be held in open civilian courts and that we could not receive justice from the killers but we went to the army court because we wanted to exhaust all avenues to get justice for our dead fathers." Elaborating on the experience of testifying before the Competent Military Authority, he adds, "At the court martial, our ID cards and mobile phones were taken three gates prior to our entering the building where we testified. We were made to strip for checking. Even the hair under my cap was security checked. Then we were separated and we didn't know each other's whereabouts. It was like entering one's grave"¹⁸².

To date, there has been no proper or fair investigation or prosecution in the Chittisinghpura case. Instead, the State has ensured, through non-cooperation, obfuscation, and ultimately outright denial through the institutions, no justice for the victims of Pathribal and Brakpora. Army, police and CRPF are all protected. At the beginning of this crime and impunity lies Chittisinghpura. The unwillingness of the State to fairly investigate the Chittisinghpura massacre appears connected to its deep and consistent investment in shielding the perpetrators of Pathribal and Brakpora. Both the fake encounter in Pathribal and the wrongful arrest of two Pakistanis were essentially attempts to prevent a fair investigation in the Chittisinghpura massacre. It is clear that only a comprehensive and overarching investigation of all

178 Statement of Nazir Ahmad Dalal, uncle of Zahoor Ahmad Dalal, resident of Mominabad, Islamabad to the researchers of this report.

179 Information suggests that the case was closed. Further, our researchers sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the CRPF between 1990 and 2011 in Jammu and Kashmir but no information was provided on this case. Our researchers also sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided on this case. Therefore, the present status of sanction on this case is uncertain.

180 Fayyaz, Ahmed Ali, 'New Delhi kills probe into killings of Kashmiri protesters' published in the Hindu on 31.01.2014. This article can be accessed at <http://www.thehindu.com/news/national/new-delhi-kills-probe-into-killings-of-kashmiri-protesters/article5635876.ece>

181 Report of the 'One Man Commission of Inquiry' of Justice S.R Pandian on the Firing Event at Brakpora/Bulbul Nowgam (Anantnag) on 3rd April, 2000.

182 Statement of Shakoor Khan, son of Jumma Khan, resident of Brari Angan to the Jammu Kashmir Coalition of Civil Society

three crimes together can lead to an understanding to actually what happened over those 13 days. Until then, the State stands indicted for all three crimes.

ENDNOTE: ON LITIGATING MASS VIOLENCE IN KASHMIR

*Why should we preserve documents that say our father's were in the wrong? This is what the Summary of Evidence [conducted by the Army in Pathribal] concluded and the Court of the Chief Judicial Magistrate nodded to. The Court document is not a Taveez.*¹⁸³

-Abdul Rashid Khan, son of Jumma Khan, killed in the Pathribal 'fake encounter'

The Jammu Kashmir Coalition of Civil Society [JKCCS] is litigating the cases of mass violence at Kunan-Poshpora, Sopore, Saderkoot and Sailan. It is also in the process of litigating the Pathribal and Mohra-Bacchai massacres. So far, the survivors and their families have been denied justice in the courts, whether those in Jammu and Kashmir or in the case of Pathribal, in the Supreme Court of India. This is in violation of the International Law of Occupation as the occupiers' are under obligation to respect the human rights of the occupied until a return of sovereignty to the occupied is arrived at. The judiciary in Jammu and Kashmir is part of the Indian Judicial system though Jammu and Kashmir has its own system of criminal prosecution outlined in the Ranbir Penal Code [RPC]. However, as has been elaborated throughout this chapter the Indian State and its agencies have sought to subvert every demand for justice and use the courts as a tool in creating and maintaining a culture of impunity. A process of justice so envisioned is a structure of violence in itself.

However, the legal process serves an important role as a conveyor of the struggle of the survivors of mass violence for justice and dignity in face of an oppressive occupation enabled by militarism. The court serves a memory bank, a repository of the records of violence in the fight against forgetfulness in future generations. In each of the cases of mass violence, invaluable information regarding the incidents is obtained from documentation such as the statements, medical records, pictures, maps--evidentiary materials necessitated by the investigation process- in turn made public by virtue of being produced before a court.

We see litigation as an act of resistance to expose the state- part of a larger campaign of activism by lawyers in Jammu and Kashmir. Even though there are few indictments of the perpetrators of mass violence and no punishments, a case is made for the moral indictment of the Indian State in Jammu and Kashmir.

183 An amulet of some spiritual significance.



CHAPTER 3: COURTS OF VIOLENCE

Introduction

The Pathribal episode not only outlined the brutality of the operation of the armed forces in Kashmir, but also exposed that legal justice is impossible for the families of the victims who have suffered at the hands of the Indian armed forces. Following the fake encounter every attempt was made to quell protests [resulting in the Brakpora massacre] and cover up the truth, for instance through DNA fudging. Then, despite a CBI chargesheet, the judicial system – the Supreme Court – was used to ensure that the case returned to the very institution responsible for the fake encounter: the army itself. A thirteen year struggle for justice culminated in 2013 in a “Summary of Evidence” by the army that did not consider it necessary to actually conduct a court-martial. There was no evidence connecting the accused to the crime was the conclusion of the army. This case is symptomatic of the manner in which all processes in Jammu and Kashmir are used to ensure impunity for State forces. The court-martial is therefore not an example of a failure of justice as much as it is an example of a tool that is used to ensure impunity and State control in Jammu and Kashmir.

The Pathribal Episode

On March 20, 2000, while President Bill Clinton arrived on a visit to New Delhi, unidentified gunmen donning army fatigues had lined up 35 Sikh in front of the Gurdwara wall in a remote South Kashmir village and killed them. Though nobody had proof for the true identity of the killers or their motive, the timing of this brazen act of terror coinciding with Clinton's India tour had already triggered an Indo-Pak blame game. Although New Delhi had vehemently accused militants for this massacre and blamed Pakistan for connivance in this horrible act, Clinton had refrained from blaming anybody in his condemnation. A day after the massacre, the then National Security Advisor (NSA) Brajesh Mishra had said that there was an “absolute proof” for the involvement of Lashkar-e-Toiba and Hizbul Mujahideen in this massacre. Islamabad, meanwhile, didn't just deny its role; they blamed the Indian army instead.

On the ground in Kashmir, however, there was a race to solve the mystery behind the identity of the killers with proof especially before the visit of the then Indian Home Minister LK Advani to the massacre site five days later on March 25, 2000. And within hours ahead of Advani's visit, the army and the J&K police claimed to have solved the case. Senior officers of army and the J&K Police told Advani that the “five Lashkar-e-Toiba mercenaries responsible for the massacre had been eliminated in a surgical operation launched by 7 Rashtriya Rifles and the local police the previous night”. This interaction took place in an open field in Chittisighpora where a special presentation of the “operation” for Advani was organized in front of the media.

But even as Colonel Ajay Saxena (Commanding Officer 7 RR) and Deputy Superintendent of Police Tajinder Singh explained the “operation” with the help of an extensive site map to Advani and the then Chief Minister Farooq Abdullah, suspicion was already floating around in whispers. Ironically when the army and police officers stood for a group-photograph with Advani, two top police officers present there stayed away. The story of the Pathribal encounter had, however, been carefully crafted and at the time both J&K and Government of India publicly vouched for its authenticity.

Initially the army and the police had described the Pathribal encounter as an important anti-terrorist operation.¹

The first fissures in the government's concocted story about the Pathribal fake encounter, however, started emerging soon. Five men had gone missing from villages of Brari Angan and Halan in the neighbourhood and Islamabad town. The families of two among these missing men (both named Juma Khan) in Brari Angan village had said that the soldiers came to their house in the middle of the night and took them away. The family of Zahoor Ahmad Dalal, a 22-year-old shopkeeper, who went missing from Islamabad town, too had said that the army men took him away.

The actual story behind the Pathribal encounter started to unfold when the villagers of Panchalthan talked about the mysterious circumstances in which five men were killed on Zontengri peak. Contrary to the government claim that there was a five-hour long gun battle, the villagers had said that these men were killed in cold blood and later a charade of an encounter was enacted in which their bodies were partially burnt and disfigured to hide their identity. Suspicion of foul play was further strengthened by the way the five men had been buried. The army and police officers involved in the “operation” had sought the help of local villagers to speed up the burial. Instead of burying them at one place, these men were buried in graveyards at Vuzkhah, Sumlam and Chogamm villages, which were miles apart.

There was enough suspicion that the men killed in a stage-managed encounter at Pathribal and dubbed as foreign militants responsible for the Chittisinghpura massacre may be the five villagers, who had gone missing after being picked up by the soldiers. The relatives of the five missing men came out on streets and the protests intensified across Islamabad district, forcing the government to order a judicial enquiry. Under severe pressure, the J&K government immediately suspended Senior Superintendent of Police and a Station House Officer besides ordering exhumation of the bodies and a subsequent DNA sampling to ascertain their actual identities.

Three days later, on April, 6, a team of forensic experts from Government Medical College, Srinagar arrived at Pathribal area to exhume the bodies and

1 Peter Popham, Eight Months After Massacre, Kashmir Demands Answers, Independent.ie, 5 December 2000, <http://www.independent.ie/world-news/eight-months-after-massacre-kashmir-demands-answers-26101439.html>

take samples for DNA tests.

On the day of exhumation, the relatives of the missing men had gathered as the graves were dug up. And before the graves were opened, the relatives had given the list of items like the clothes that the missing men were wearing, a ring on a finger, a watch on another wrist.

Nazir Ahmad Dalal whose nephew Zahoor Ahmad Dalal was among the five missing men had told the officials that Zahoor was wearing a maroon sweater. As the grave was opened, the first thing to come out was a half-burnt maroon sweater.²

When the next grave was opened, the body was immediately identified as that of Juma Khan from Brari Angan village. Khan's widow, Roshan Jan, had started crying as soon as she saw the body, saying that it is her husband's body. She had identified the bearded chin and nose, although Khan's face was not clearly recognisable. There was another Juma Khan, who was identified by his relatives by the ring he still wore on his finger.³

As the exhumation process ended and the bodies buried again, the truth about the Pathribal encounter was already out. The results of the DNA samples were needed only for legal purposes.

The Pathribal episode has also been analyzed in detail in the preceding chapter. The outcry over the end of legal proceedings for the accused involved in the Pathribal fake encounter yet again raised serious concerns about military tribunals. A comprehensive legal and judicial analysis of the military courts in India proves that in fact they have been constituted in conflict zones to impede justice and shield perpetrators that belong to the armed forces. A few of the major challenges with the existing military courts are discussed in the following sections.

The Army Act was designed for punishing disciplinary offences

A thorough reading of the Army Act, 1950 along with the prescribed offences clarifies that it was primarily designed for punishing disciplinary offences within the army. The procedure prescribed in the Army Act is inadequate to try heinous offences. Moreover, the Army Act falls short of many crucial procedural safeguards that are integral to any criminal code of procedure. Even the Army Act somewhat recognizes this inherent limitation, and through Section 70 limits the applicability of the Army Act, 1950 to serious offences of murder or rape.

"70. Civil offence not triable by court-martial. A person subject to this Act who commits an offence of murder against a person not subject to military, naval or air force law, or of culpable homicide not amounting to murder against such a person or of rape in relation to such a person, shall not be deemed to be guilty of an offence against this Act and shall not be tried by a court-martial, unless he commits any of the said offences-

(a) while on active service, or (b) at any place outside India, or (c) at a frontier post specified by the Central Government by notification in this behalf."

Section 70 of the Army Act is an admission that it is not fully equipped to deal with the serious offences of murder and rape against civilians. But it also carves out an exception for those armed personnel, who have committed the aforesaid crimes at a frontier post specified by the Central Government providing that they can still be tried by a court martial. Most of the offences described in the Army Act, and the punishments therein do not envisage instances of serious human rights violations. Consequently, the framework of procedural laws that would be required for prosecuting serious crimes is absent from the Army Act, 1950 even in comparison with the Indian Criminal Procedure Code that codifies the procedure for criminal trials.

The Supreme Court of India has also reiterated that the primary objective of the Army Act has been to preserve military discipline.

"Proceedings of a court-martial are not to be compared with the proceedings in a criminal court under the Code of Criminal Procedure where adjournment have become a matter of routine though that is also against the provisions of law. It has been rightly said that Court-martial remains to a significant degree, a specialised part of overall mechanism by which the military discipline is preserved. It is for the special need for the armed forces that a person subject to Army Act is tried by court-martial for an act which is an offence under the Act."⁴

Unlike the ordinary criminal courts, court martials simply do not have the inbuilt mechanisms to independently and effectively prosecute severe human rights violations because the Army Act and other similar legislations were drafted primarily to maintain military discipline.

Puncturing the facade of justice: a perverse choice

For the Pathribal fake encounter, there was clinching prosecutable evidence that was unearthed by no less than the Central Bureau of Investigation (CBI), which established the culpability of the accused officers. But the most disappointing aspect of the Pathribal fake encounter was that it was not tried in a regular court but as part of the procedures under the court-martial law in the Army Act. The Supreme Court was approached in the Pathribal case on two main issues: first, whether or not sanction was required for prosecution in that particular instance for initiation of criminal proceedings in a regular court and court martial. Furthermore, at what stage would such sanction be required?

Section 125 of The Army Act, 1950 provides the army with the choice between a regular criminal court and court martial and has continued to shield personnel of the armed forces from being tried in regular criminal courts despite them committing grave human rights violations. It reads as follows:

"Section 125. Choice between criminal court and court-martial. When a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the officer commanding the army, army corps, division or independent brigade

2 Muzamil Jaleel, Bodies of slain militants exhumed: this is tyranny, cry relatives, The Indian Express, 7 April, 2000.

3 Yusuf Jameel, Villagers Identify 2 bodies in J&K Grave, The Asian Age, 7 April 2000.

4 Union of India and others v. Major A. Hussain and others, (1998) 1 SCC 537

in which the accused person is serving or such other officer as may be prescribed to decide before which court the proceedings shall be instituted, and, if that officer decides that they should be instituted before a court-martial, to direct that the accused person shall be detained in military custody.”

Moreover, Section 126 of the Army Act, 1950 prescribes that if a criminal court is of the view that it has jurisdiction over the army offender, and wants to initiate proceedings against him/them before itself, then the matter shall be referred to the Central government, whose decision in this regard shall be final.

“126. Power of criminal court to require delivery of offender. (1) When a criminal court having jurisdiction is of opinion that proceedings shall be instituted before itself in respect of any alleged offence, it may, by written notice, require the officer referred to in section 125 at his option, either to deliver over the offender to the nearest magistrate to be proceeded against according to law, or to postpone proceedings pending a reference to the Central Government. (2) In every such case the said officer shall either deliver over the offender in compliance with the requisition, or shall forthwith refer the question as to the court before which the proceedings are to be instituted for the determination of the Central Government, whose order upon such reference shall be final.”

Identical provisions also exist in The Border Security Force Act, 1968.⁵ If there is any dispute about jurisdiction between criminal court and security force court, the matter will be referred to the Central Government, whose order upon such reference shall be final.⁶

The Supreme Court in the Pathribal judgment reiterated the applicability of Section 125 of the Army Act, and permitted the army personnel to choose the forum of their trial. It further held that if the accused opt for a court-martial then the said proceedings would commence immediately without prior sanction from the Central Government and would be concluded strictly in accordance with law expeditiously. But if the accused exercised their option to be tried by the criminal court then sanction for prosecution would be required from the Central Government.

The Supreme Court further added that the Central Government shall take a final decision on the said application within a period of three months from the date of receipt of such an application. Only if sanction is granted by the Central Government, the criminal court shall proceed with the trial and conclude the same expeditiously.

As expected, the Army chose court martial over regular criminal court proceedings. In January 2014, the summary of evidence, a step preceding court martial held that there was no need to even conduct a court martial, thereby effectively “acquitting” all the five accused for the Pathribal fake encounters despite

clear evidence against them established by the CBI in its chargesheet after conducting comprehensive investigations. The army did not even deem it necessary to conduct a court martial, and acquitted all the five accused merely after holding a preliminary summary of evidence.

Under Rule 22 of the Army Rules, a Summary of Evidence is first conducted by a 'Competent Military Authority', which hears the charges against the accused and gathers evidence, which in the case of Pathribal included, reports initiated after the incident, forensic reports, statements of the witnesses recorded by CBI, and the investigation reports of Inquiry Commissions ordered by the government all of which are said form the basis for the court martial itself. On 20th January, 2014, in a half page notification to the Chief Judicial Magistrate, the Lieutenant General of the Northern Command of the Indian Army, D.S Hooda says “there is no evidence on record which in any way connects any of the accused persons with the murder, wrongful confinement, abduction / causing disappearance of the five persons.” He then proceeds to dismiss all charges against the accused without any further explanations.

The Indian army sought that the entire proceedings now end as they have carried out “effectual proceedings”. Based on the record before it, the CJM, as per Section 7 (ii) of the Jammu and Kashmir Criminal Courts and Court-Martial Rules, 1983, could be persuaded to hold that in this case there have been no effectual proceedings. The matter would then be referred to the “State Government” which “may, in consultation with the Central Government” take appropriate steps against the accused in accordance with law. Instead, the CJM accepted that effectual proceedings had taken place.

The fallacious understanding of the Supreme Court with regard to the Pathribal fake encounter promotes an uncritical acceptance of court-martials even for heinous crimes such as fake encounters or rape that could *never* have been carried out in discharge of official duty. The Supreme Court has erred in holding that the immunity clause of “good faith” entrenched in the Armed Forces (Jammu and Kashmir) Special Forces Act, 1990 [AFSPA], needs to be given a wide interpretation and even in the Pathribal fake encounter, the presumption of good faith remains. Before the Supreme Court, the CBI had rightly raised the plea that killing innocent persons in a fake encounter in execution of a conspiracy cannot be a part of official duty and thus, in view of the facts of the case no sanction is required. Moreover, it held that under Section 125 of the Army Act, the stage of making option to try an accused by a court-martial and not by the criminal court is after filing of the chargesheet and before taking cognizance or the framing of charges.

5 “Section 80. When a criminal court and a Security Force Court have each jurisdiction in respect of an offence, it shall be in the discretion of the Director-General, or the Inspector-General or the Deputy Inspector-General within whose command the accused person is serving or such other officer as may be prescribed, to decide before which court the proceedings shall be instituted, and, if that officer decides that they shall be instituted before a Security Force Court, to direct that the accused person shall be detained in Force custody.”

6 Section 81, The Border Security Force Act, 1968.

Flouts Principles of Natural Justice

The principle of natural justice is the cornerstone of any judicial system. The principle is comprised of two salient features: first, *nemo iudex in causa sua* which means that no person can be a judge in their own cause; and second, no one can be condemned unheard. The trial of the personnel of armed forces who have been involved in human rights violations by a court martial is in direct contravention of the first principle that no one person can be a judge in their own cause. What distinguishes a kangaroo court from a well functioning judicial system is natural justice and due process. Take away these fundamental guarantees, and any "judicial process" becomes a farce. It is not a complicated argument but rather a commonsense one. Court-martials, at every stage, flout fundamental principles of natural justice.

When members of the armed forces have been involved in crimes such as fake encounters and rape which can never be committed in line of duty, then how can a military court or court martial, which is not itself independent try them for these heinous crimes? Can any armed force personnel ever make the argument that rape was committed in the line of duty? How can the very institution that was involved in committing the crime (armed forces) then through a court martial, which is also comprised of armed forces personnel sit in judgment against its own? Essentially, court martial proceedings belie not only the sacrosanct principle of natural justice but also the judicial doctrine of separation of powers.

The Supreme Court of India while considering the Army Act in *Ranjit Thakur*⁷ decided that in order to ascertain whether bias exists or not what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. Laying down the proper approach it said that the judge should not look at his own mind and ask himself, however, honestly whether or not: "Am I biased?" but rather to look at the mind of the party before him. The Supreme Court also referred to Lord Esher's judgment in *Allinson v. General Council of Medical Education and Registration*, [1894] 1 Q.B. 750 at 758 which had clarified the principle of independence of judiciary:

"The question is not, whether in fact he was or was not biased. The Court cannot inquire into that... In the administration of justice, whether by a recognised legal court or by persons who, although not a legal public court, are acting in a similar capacity, public policy requires that, in order that there should be no doubt about the purity of the administration any person who is to take part in it should not be in such a position that he might be suspected of being biased."

The Supreme Court, in the same judgment, also cited another important decision of Lord Denning in the UK where he had laid down that judicial impartiality has to be determined by whether or not a general impression of bias is created in the minds of people. Essentially, it is premised on the principle that justice should not only be done but also seen to be done. Or, that justice is not

done until and unless those affected most by the injustice feel a sense of closure.

In *Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon*, [1969] 1 Q.B. 577, at 599, Lord Denning M.R. had opined: "...in considering whether there was a real likelihood of bias, the court does not look at the mind of the justice himself or at the mind of the chairman of the tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression, which would be given to other people. Even if he was as impartial as could be nevertheless if right minded persons would think that in the circumstances there was a real likelihood of bias on his part, then he should not sit...".

The above fundamental principles of independence and impartiality in fact, form the crux of the opposition to military tribunals prosecuting human rights crimes. In addition to compromising basic procedural safeguards, they are not perceived to be unbiased by parties that are affected most by their judgment, including the victim families thus calling into question their independence and impartiality.

International consensus against military courts

The flouting of natural justice principles amongst other reasons has also propelled global consensus to challenge the jurisdiction of military courts for serious crimes. Over the last decades, international human rights and criminal law has consolidated towards not trying serious human rights crimes in military tribunals but in regular criminal courts. Successive UN Special Rapporteurs on the independence of judges and lawyers who have been mandated to ensure the independence of the judiciary have come out strongly in their reports to the Human Rights Council & the UN General Assembly against military tribunals trying serious human rights abuses.

The Office of the High Commissioner for Human Rights in Colombia (OFACONU) has reported extensively that the trial of military or police personnel responsible for human rights violations in military courts are illegal as it raises serious due process concerns. OFACONU in its second report submitted to the then Commission on Human Rights unequivocally expressed grave concerns about the independence and impartiality of military Tribunals. It said that the establishment of military tribunals is:

"...contrary to the provisions of Article 14 of the International Covenant on Civil and Political Rights. It contravenes the principle of the independence and impartiality of the judicial authorities, since the trial function is entrusted to the hierarchical superior and there is no separation at all between the function of command and that of prosecution. This means that in some cases the same official may act both as judge and as party in relation to the acts under investigation. It must also be regarded as a violation of human rights that, in the military criminal courts, persons who have suffered loss or injury as a result of an offence are not allowed to introduce criminal indemnification proceedings (*parte civil*)".⁸

7 (1987) 4 SCC 611.

8 United Nations document E/CN.4/1999/8, 16 March 1999, paragraph 63

Most of the reports of UN Special Rapporteur have considered the issue of military courts and considered them to be illegal on grounds of lacking independence and impartiality. Sir Nigel Rodley, a noted international law jurist while serving as the UN Special Rapporteur on Torture minced no words while concluding the illegality of military tribunals for trying serious human rights violations such as Torture:

“A person found to be responsible for torture or severe mal-treatment should be tried and, if found guilty, punished...Military tribunals should not be used to try persons accused of torture...Complaints about torture should be dealt with immediately and should be investigated by an independent authority with no relation to that which is investigating or prosecuting the case against the alleged victim”.

The UN Special Rapporteur, Sir Nigel Rodley, subsequent to a country visit to Mexico in his report cautioned the Mexican authorities that in cases of serious crimes committed by military personnel against civilians, in particular torture and other cruel, inhuman or degrading treatment or punishment, regardless of whether they took place in the course of service, [are] subject to civilian justice.⁹

The UN Working Group on Involuntary and Enforced Disappearances has regularly reiterated that military courts have contributed significantly to impunity for enforced disappearances. This UN Working group was established by the Commission on Human Rights (now Human Rights Council), consisting of five of its experts in their individual capacities, to examine questions relevant to enforced or involuntary disappearances of persons¹⁰. The work of the UN Working Group on Involuntary and Enforced Disappearances in collaboration with local human rights groups contributed significantly to the adoption of the International Convention of the Protection of All Persons from Enforced Disappearances, which entered into force in 2010.

The Working Group has consistently maintained that military tribunals are one of the greatest impediments in achieving justice for enforced disappearances. The Working Group in one of its earliest reports in 1993 submitted to the Commission on Human Rights stated that:

“Legal prosecution and sentencing in the case of offences involving gross violations of human rights such as disappearances should take place within the framework of the civil courts, even if those concerned belonged or belong to the armed forces.”¹¹

The Inter-American Convention on Forced Disappearance of Persons expressly states that members of the military or other state actors involved in forced disappearances cannot invoke military jurisdiction. It clearly states that “The acts constituting forced disappearance shall not be deemed to have been committed in the course of military duties.”

More specifically, Article IX states:

“Persons alleged to be responsible for the acts

constituting the offence of forced disappearance of persons may be tried only in the competent jurisdictions of ordinary law in each state, to the exclusion of all other special jurisdictions, particularly military jurisdictions.

No person can be a judge in their own cause is one of the oldest principles of natural justice that has been completely disregarded by the court-martials under the Army Act, 1950, and the Border Security Forces Act, 1968, particularly for serious human rights violations. The court-martials not only violate natural justice but also other sacrosanct guarantees enshrined in Indian criminal justice system.

Act not done in pursuance of official duty

The armed forces have mostly invoked the legal defence that their acts of commission or omission were done in the pursuance of “official duty.” If an armed forces personnel rapes a woman while serving at the front, it is impossible to claim that this was an act done in pursuance of official duty. Similarly, other heinous human rights violations such as stage managed or fake encounters, torture, enforced disappearance cannot be done in pursuance of an official duty. By their very definition these are illegal acts that could not have been done in furtherance of any official duty. Consequently, the legal shield available to the armed forces cannot exist for these heinous crimes.

Under Indian law, the legal immunity provided to the armed forces under Section 7 of the AFSPA is caveated by the “good faith” requirement. The Supreme Court, instead of giving a strict interpretation to what would constitute good faith, has given the armed forces even more leeway to commit serious crimes. It opined:¹²

“...the protection and immunity granted to an official particularly in provisions of the Act 1990 or like Acts has to be widely construed in order to assess the act complained of. This would also include the assessment of cases like mistaken identities or an act performed on the basis of a genuine suspicion. We are therefore of the view that such immunity clauses have to be interpreted with wide discretionary powers to the sanctioning authority in order to uphold the official discharge of duties in good faith...”

Although the Supreme Court has entered into a somewhat long and confusing discussion on what constitutes good faith, it has still failed to answer the most fundamental question being raised by the facts of the Pathribal massacre whether or not a fake encounter can ever be carried out in good faith or in pursuance of an official duty. The Court has skirted around the crucial question that fake encounters can never be committed in “good faith” or “pursuance of official duty.”

Even the facts of the infamous Sopore massacre of 6 January 1993 [analyzed in detail in the preceding chapter] belie the argument that these crimes were

9 United Nations document E/CN.4/1998/38/Add.2, paragraph 88.

10 Resolution 20 (XXXVI), 29 February 1980. http://www.ohchr.org/Documents/Issues/Disappearances/E-CN.4-RES-1980-20_XXXVI.pdf.

11 United Nations document E/CN.4/1993/25, paragraph 46. [Spanish original, free translation.]

12 General Officer Commanding v. CBI & Anr., (2012) 5 SCR 599.

committed by the armed forces in “good faith” or in “pursuance of official duty”. On 6 January 1993, the 94th Battalion of the Border Security Force (BSF), which is an Indian paramilitary force unit operating in Jammu and Kashmir massacred around 46 civilians and injured dozens in an act of revenge triggered by the ambush of their convoy by militants earlier that day. The 94th Battalion of the BSF unleashed its terror on Kashmiri civilians massacring dozens and burning shops and houses in Sopore, a town in North Kashmir. Twenty years later, the CBI on 16 July 2013 filed a closure report under Section 173 (2) CrPC. The CBI was handed over the case for investigation on 20 January 1993.¹³

One of the reasons for filing the closure report given by the CBI was that “...period of more than 20 years has already elapsed and thorough investigation could not yield any result for the reasons mentioned above. The accused BSF personnel have already been tried for the alleged offences u/s 304, 307 & 436 RPC by the competent court established by law (i.e. General Security Force Court constituted under BSF Act, 1968) and convicted accordingly.”¹⁴

But the court martial carried out by the BSF had the effect of shielding perpetrators by letting them off the hook with very light sentences despite the grave crimes that they had allegedly committed. The court martial was carried out against seven personnel under sections 304, 307 and 436 RPC thereby excluding the most important charge under Section 302 RPC for murder. Moreover, the seven personnel who were tried were only found guilty under Section 436 RPC [“Mischief by fire or explosive substance with intent to destroy houses, etc.”] and got away with extremely light punishments of “3 months RI in force custody” alongwith some administrative strictures¹⁵. Section 436 RPC prescribes the following punishment: “...shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine”. The alleged perpetrators of the Sopore massacre got away with very light sentences despite the serious allegations that were made against them because there is no political will to punish human rights abusers belonging to the armed forces in Kashmir. The court martial process is used as a tool for impunity.

A Protest Petition was filed in June 2014 by the victim families before the Designated Judge of the TADA Court, Srinagar challenging the closure report filed by the CBI for the Sopore massacre and asking for further investigations under Section 173 (8) CrPC. Even in the Sopore massacre, the families were completely kept out of the process, and they did not even have a copy of the final judgment of the BSF General Security Force Court.

Is it possible that the BSF personnel could have massacred around 46 civilians in cold blood without

the necessary intent to commit murder? Could this egregious act be ever justified as having been done in pursuance of an official duty? Can there be any legal justification for a massacre such as Sopore carried out in broad daylight by the BSF? And, finally, how would they explain the serious compromise on the procedural safeguards; failing to involve the families of the victims, providing then with the relevant documents, or even ensuring their appearance before the BSF General Security Force Court proceedings. The entire investigation of the Sopore massacre was done with a view to subvert justice and not unearth the truth.

Complete lack of Procedural fairness

Any modern criminal justice system is credible only if it passes the dual test of due process and procedural fairness. Because the Army Act, 1950 is extremely limited in its scope and design, and primarily caters to offences committed by personnel against the army or disciplinary proceedings, many procedural safeguards inherent in the Criminal Procedure Code are absent. The same is true of other similar Acts such as The Border Security Forces Act, 1968.

Foremost, there is no provision that grants the affected parties a right to make a formal legal representation before the court-martial. The Judge Advocate General, the legal officer incharge of conducting the court martial proceedings does not involve the victims or their families in any manner. They are not even informed about the status of their cases. During a criminal trial in the regular court, the victims and their families are entitled to receive a copy of all the documents, including the FIR, chargesheet, witness statements and other relevant materials that are examined by the Court before deciding on the guilt of the accused.

However, the victims are not part of the regular hearings during the court martial and they are even not kept informed about the progress in the case. Mostly, they are not allowed to attend court martial hearings. Moreover, the final orders or decisions of the court martials are never made public. The Army has even refused to provide a copy of the final order of the court martial to the victims or their families. Even when the victim families have approached the courts to ask the armed forces to provide a copy of the final judgment of court martials, they have been unsuccessful, as seen in the Pathribal case where the lower refused an application from the victim families for the summary of evidence records.¹⁶ This is the case despite Rule 80-A of the Army Rules 1954 that mandates open courts in general.

The Report of the Special Rapporteur for the Independence of Judges & Lawyers, Leandro Despouy submitted in 2006 to the General Assembly earmarked the alarming issue that in a large number of

¹³ Para 16.1, CBI closure report in FIR no. 8/1993.

¹⁴ Para 16.26, CBI closure report in FIR no. 8/1993.

¹⁵ In response to RTI dated 10 January 2012, BSF provided this information by correspondence dated 3 March 2014.

¹⁶ Chief Judicial Magistrate, Srinagar, order dated 28 May 2014 in CBI v. Brigadier Ajay Saxena & Ors.

countries, military tribunals continue to try members of the armed forces for serious human rights violations, or to try civilians, in clear violation of applicable international principles, and, in some instances, even in violation of their own national laws¹⁷. Clearly, the court-martial proceedings also violate fundamental provisions of the Indian criminal code. This Report also reiterated the aforesaid two main principles that are used by persons who oppose military tribunals or court martials for serious crimes.

After years of extensive research and consultation among experts, jurists, civil society groups and military personnel from all over the world, Louis Joinet drafted the principles governing the administration of justice through military tribunals. Foremost, Principle 34 of the Joinet Principles stipulates that:

“In order to avoid military courts, in those countries where they have not yet been abolished, helping to perpetuate impunity by virtue of a lack of independence resulting from the chain of command to which all or some of their members are subject, their jurisdiction must be limited solely to specifically military offences committed by military personnel, excluding human rights violations constituting serious crimes under international law, which come under the jurisdiction of the ordinary domestic courts or, where necessary, an international court.”¹⁸

Principle 29 of the updated principles for the protection and promotion of human rights through action to combat impunity, drafted by Diane Orentlicher and recommended by the Commission on Human Rights states that:

“The jurisdiction of military tribunals must be restricted solely to specifically military offences committed by military personnel, to the exclusion of human rights violations, which shall come under the jurisdiction of the ordinary domestic courts or, where appropriate, in the case of serious crimes under international law, of an international or internationalized criminal court”.¹⁹

One of the reasons for favouring ordinary courts to prosecute human rights violations is to enable and provide access atleast to the families of the victims to the trial process in an open court. An opaque and exclusionary court-martial process can be no replacement for a transparent judicial system. Kashmir has witnessed 'cover ups' by the armed forces in almost all cases when they have been involved in human rights crimes, and therefore, there is absolutely no trust in that system.

Limited Power to appeal an acquittal

The Army Act, 1950 does not provide for an appeal from an acquittal from a court martial, which violates fundamental principles of criminal jurisprudence. With the introduction of the Armed Forces Tribunal Act, 2007, a limited right to appeal was provided. Nonetheless even the Armed Forces Tribunal Act,

2007 is geared towards appeals from convictions and not acquittals. For the Pathribal incident, this is the case despite overwhelming evidence of the accused carrying out a fake encounter in the chargesheet filed by the CBI. Similarly, even in other cases of heinous crimes, the accused belonging to the armed forces have escaped any liability for their actions by a mere acquittal in the court-martial proceedings. The acquittals could not be appealed, primarily because of the opaque court martial proceedings, and the victim families being denied any documents related to the court-martial by the army. Obviously, if they were not even provided with a copy of the order of the court-martial or other related documents, it would be impossible to file an appeal against the final order.

While The Armed Forces Tribunal Act, 2007 provides for a very limited recourse to appeal, the Border Security Forces Act, 1968 still completely precludes any appeal process. Section 117 of the BSF act, 1968 provides that any person who is aggrieved by a finding or sentence of any Security Force Court which has been confirmed, may present a petition to the Central Government, the Director-General, or any prescribed officer superior in command to the one who confirmed such finding or sentence, and the Central Government, the Director-General, or the prescribed officer, as the case may be, may pass such order thereon as it or he thinks fit. There is no statutory first appeal to a judicial authority.

Unlike the BSF Act, 1968, which excludes appeals from acquittals, the Indian Code of Criminal Procedure, 1973 that governs the general criminal law clearly provides for appeals against an acquittal by the Prosecution (Section 378, CrPC). This fundamental right to appeal an acquittal in a criminal case has always been recognised by the criminal statute in India. More recently, the right to file appeal from an acquittal has been expanded substantially, and the amended Section 372, CrPC also provides for an appeal against an acquittal by the victims themselves. Under the amended Section 372 CrPC outlined below, the victims can also appeal for the enhancement of sentence.

“Section 372. No appeal to lie unless otherwise provided

No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.”

17 Report of the Special Rapporteur on the independence of Judges & Lawyers, 12 September 2006; A/61/384: paras 18-47 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/534/43/PDF/N0653443.pdf?OpenElement>.

18 Final report on “Question of the impunity of perpetrators of human rights violations (civil and political),” prepared by Louis Joinet for the Commission on Human Rights, E/CN.4/Sub.2/1997/20, June 26, 1997.

19 Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement>, 8 February 2005.

The lack of appeals from acquittals is another strong argument for extending the jurisdiction of ordinary criminal courts for trying serious human rights offences committed by the armed forces. Both under Indian and International law, appeal from acquittals is an essential element of due process. It has been argued that the High Courts and the Supreme Court of India has the power of judicial review of court-martial proceedings. Nonetheless, judicial review by the High Courts and the Supreme Court can never replace a statutory criminal appeal, especially when the judicial review against court-martial is only available on very limited grounds. For serious crimes of murder and rape, a statutory criminal appeal provides the opportunity to reappraise the evidence if required. It also provides an opportunity for both parties to put forward points of facts and law to the appellate court. Clearly, denying this right of a criminal appeal from acquittals for serious human rights violations will only jeopardize a fair trial in these cases.

Besides even the judicial review power of the High Court and the Supreme Court is very limited.

When examining the general issue of military jurisdiction, the Special Rapporteur on the Independence of Judiciary reiterated that the right to appeal from military tribunals was fundamental. Obviously, in India the right to appeal is adversely affected if there is no appeal from an acquittal pronounced by a court-martial. The following extract summarizes the position under international criminal law on what would ordinarily constitute a fair trial:

"Principle 5 of the Basic Principles on the Independence of the Judiciary provides the right of everyone to be tried by ordinary courts or tribunals established by law. More categorically, principle 5 (f) of the Singhvi Principles provides that the jurisdiction of military tribunals shall be confined to military offences, and that there shall always be a right of appeal from such tribunals to a legally qualified appellate court or tribunal or a remedy by way of an application for annulment.

Furthermore, principle 22 (b) of the Johannesburg Principles provides that '[i]n no case may a civilian be tried for a security-related crime by a military court or tribunal'. Article 16, paragraph 4, of the Paris Rules also provides that 'civil courts shall have and retain jurisdiction over all trials of civilians for security or related offences; initiation of any such proceedings before or their transfer to a military court or tribunal shall be prohibited. The creation of special courts or tribunals with punitive jurisdiction for trial of offences which are in substance of a political nature is a contravention of the rule of law in a state of emergency.'²⁰

Victims' Rights are severely compromised

By not allowing the victims to participate during court martial proceedings, concerns of due process have been raised. Essentially these severely compromise

rights of victims for human rights violations.

Manzoor Ahmad Wani, a salesman in a hardware shop was cleaning the store when two soldiers belonging to the 36 Rashtriya Rifles [RR], Camp Larkipura, Islamabad entered the shop, caught him by the collar, and abused him. When Manzoor Ahmad Wani asked him to stop abusing him without any reason, the soldier, Rifleman Mukesh Singh shot at him. Since Manzoor Ahmad was shot at from a very close range, he was seriously injured. Although he was rushed to the District Hospital, Islamabad, and was then referred to Sher-e-Kashmir Institute of Medical Sciences [SKIMS], Srinagar, his left kidney and spleen had to be removed. His injuries were so severe that even the Head of General Surgery at SKIMS hospital, Srinagar, had to issue a certificate which not only outlined the grievous injuries including loss of both kidneys and spleen but also mentioned that he was susceptible to infections and even possible renal failure.²¹

Apparently, a Summary General Court-Martial [SGCM] was convened in 2008 but the victim was completely kept out of the process. He was not informed about the findings of the court martial. When information was sought in 2012 through an RTI application under the Jammu and Kashmir Right to Information Act, 2009, it was informed by the Judge Advocate General Department that Rifleman Mukesh Singh was acquitted. Yet again, the victim was not even informed about the final decision in the court martial proceedings.

In the case of Tariq Ahmad Sheikh, resident of Budgam District, killed in April 2000 by the BSF, accessing basic information on the status of the court-martial took two years. The BSF conducted a trial under the General Security Force Court at which the father-in-law and the wife of the victim testified. On 29 February 2012 information was sought through RTI to the BSF on the trial. By letter dated 20 March 2012, the IPTK was informed that the BSF was exempted from providing this information. The matter was agitated upto the Central Information Commission [CIC], which on 7 January 2014 ordered that the status be provided but refused to order further details as it considered it to be an invasion of privacy. This is a clearly erroneous understanding of the law as there is an obvious public interest in such information being shared. On 3 March 2014, the BSF provided information that three persons were jointly tried by court-martial from 3 November to 22 November 2011, for murder and abducting for murder, and found them not guilty. This was confirmed by the confirming authority on 6 July 2012.²²

The testimony of Rasheed Khan, one of the victims of the Pathribal killings speaks to their limited participation in the court-martial proceedings. They received their first summon in their grandfather Faqirullah Khan's name, who had died a long time ago. A police person in civil clothes came to their house to

20 130 United Nations document E/CN.4/1998/39/Add.1, paragraph 79.

21 This case is analyzed in greater detail in the very next chapter of this report titled "Alleged Perpetrators..."

22 This case is analyzed in greater detail in the very next chapter of this report titled "Alleged Perpetrators..."

serve the summons. This summon was issued from Army's Nagrota camp in Jammu. Abdul Rashid Khan, son of Jumma Khan says, "One SSP became a DIG [referring to SSP Farooq Khan] for killing my father. Who knows what promotions others would be given for throwing us into a nallah in Nagrota?" It was only with the help of media were they able to get fresh summons issued in his own (Rasheed Khan) name and also get the case transferred to Army's Awantipora camp, which is in South Kashmir. They had demanded that the case be transferred to Army's Khundroo Camp, which is close to their village, but the Army transferred it to their Awantipora camp. According to Rasheed Khan, summons were also sent to several persons who had nothing to do with the case, and eventually it was on the basis of these irrelevant testimonies that the accused were acquitted.

The summary of evidence was held at the Victor Force Headquarters in Awantipora. They appeared before the summary of evidence on two days. While entering the camp they were frisked and kept away from each other. They were informed that whatever they would testify about the incident would be recorded. They testified that they had been struggling for justice for the past twelve years. They were asked how could they appear in the proceedings without a lawyer or any security. The victim families replied that they appealed to the government to provide them with a lawyer and security but they did not receive anything.

Then Rasheed Khan was asked about the incident itself. He explained in great detail how on 24th March 2000 at around 2:00 am, his father Jumma Khan was abducted by the Army. At the time of the abduction, the army had assured him that his father would return in half an hour. At the summary of evidence proceedings, they asked him as to how he could be certain that it was the army that had abducted his father. He gave a very detailed factual account of the events of the night. He said that when his father was abducted, his uncle had insisted that he should accompany Jumma Khan. But the army did not allow the uncle to go with them. After that Rasheed Khan and other witnesses were informed that they need to stay in the army camp for the night so that they could be cross-examined the next day. But somehow the army officials were told that if these people (witnesses) of Brari Angan were kept in the army camp for the night, it would cause uproar in the village. It was only then that the witnesses including Raheed Khan were released on that day and were told to come again the following day.

On the next day Rasheed Khan noticed that the accused army personnel were kept separately, and one amongst them questioned him as to how he was able to identify that it was army only who had abducted his father. Rasheed Khan replied that when they had entered inside their house on that fateful night, he had switched on the light, and seen that the men who had entered the house were wearing chitra (camouflage) uniform. When he looked out of the house, he could tell that they were

more than a hundred persons.

Rasheed Khan was further cross examined by the accused themselves as to how he could say with certainty that it was the army only because even the militants could come dressed up in camouflage uniforms to which Khan replied that even the militants may be wearing chitra uniforms but militants cannot be 100-200 in number at one place. Moreover, how could such huge numbers of militants be moving around together when the army camp is just 2 kms away from the house? Obviously, if they were militants then they would have been far fewer in number?

He was further questioned that on how he could identify that the dead bodies were of civilians and not militants given that they were badly burnt. He replied that usually subsequent to any militant encounter, the villagers living nearby are asked to identify whether the militants were Kashmiri or Pakistani. But in Pathribal, the dead bodies were so badly burnt that no one could identify them. However, Khan could identify his father's body as he was able to recover his identity card from his clothes. When he was asked to show the identity card to the, he testified before the summary of evidence proceedings that he had submitted all the evidence recovered on the spot to the Sessions court.

Sanction required to prosecute

What happened in the Pathribal massacre underpins the complete lack of accountability of the security forces even when they commit severe human rights violations. Court-martial proceedings have promoted impunity for serious human rights crimes in Jammu and Kashmir for over two decades now.

Essentially, whenever the security forces commit human rights violations, two-fold legal provisions hamper accountability: firstly, the concerned personnel can choose to be tried in the forum he desires, and in most cases they choose court martial. Secondly, particularly after the Supreme Court decision in Pathribal, the issue of sanction for prosecution.

The relevant sections of the various laws regarding prior sanction for prosecution of the armed forces include:

"Section 45(1), CrPC- Notwithstanding anything contained in Sections 41 to 44 (both inclusive), no member of the Armed Forces of the Union shall be arrested for anything done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central Government."

"Section 197(2), CrPC- No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government."

“Section, 7, AFSPA- Protection of persons acting in good faith under this Act.- No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.”

For prosecuting members of the armed forces prior sanction of the Central government is required. However, prior sanction is required only initiating for prosecution in the ordinary criminal courts and not court martial. Why is there this distinction? Why is the immunity not available for court martial proceedings? This distinction implies that court martial proceedings are not as serious as trial before the ordinary criminal courts. What is the rationale for not requiring sanction for court martial proceedings? It emanates from the fact that court martial is considered much lighter than prosecution in ordinary criminal courts. Or perhaps that as the army is itself in charge of the conduct of the court-martials there is no need for any further “protection” in the form of prior sanction from the government.

Even when sanction is sought for prosecution of the armed forces by the government, it is a long drawn process, and it is nearly impossible to gain permission. The Investigating officers of the local police find it impossible to enlist the cooperation of the armed forces whenever their personnel are allegedly involved in committing serious violations. A police officer interviewed as far back as 2005 had pointed out that the armed forces refuse to cooperate with any investigations when their personnel are allegedly involved.

“We were investigating a case involving an army officer. The concerned army unit's reply to our letter was a threat. They said that if the police overstepped its boundaries and interfered with them the consequences could be unpleasant.”²³ (Police officer, Jammu and Kashmir Police, Srinagar) Even in the cases in which the police were specifically ordered by the courts to conduct investigations, the police complained that the communication between the investigating officers and the concerned battalion of the army/paramilitary is long-drawn-out. The police characterized the army's response as indifferent, arrogant and non-cooperative. Eventually, the case was closed. Very often, the sanctioning authority keeps the cases for sanction pending thus causing severe delay, as evidenced by the cases analyzed in the subsequent chapter of this report. Neither do they grant sanction nor deny it.

Inordinate delays & lack of transparency

Military Tribunals have facilitated impunity for serious human rights violations in Kashmir. Between December 2011 and January 2012, the IPTK filed various RTIs to the Ministry of Home Affairs and Ministry of Defence, seeking information on the court-martials conducted in Jammu and Kashmir from 1990 till the date of filing of RTI.

The Ministry of Defence, Government of India provided very limited information and that too with regard to merely one unit of the Indian Army, the Rashtriya Rifles. By and large, even in the case of court-martials, the information provided again illustrates patterns and forms of impunity. Of particular significance is the absolute lack of accountability and transparency in relation to the armed forces engendered by their absolute refusal to share information. For example, information provided by communication dated 28 March 2012 was deficient but also telling: between 2001 and 2009, the period for which information was provided, only **four** officers [against numerous allegations] were subject to a court-martial process. Further, only two of these cases dealt with potential human rights violations. Major Rehman Hussain was dismissed from service for the charge of rape, and Major V.K.Rawat was found not guilty in a case of killing.²⁴

On 18 October 2012, the Central Information Commission [CIC] dismissed the second appeal on the contention of the Ministry of Defence that information had already been provided on 28 March 2012. The CIC failed to consider the blatantly obvious that the 28 March 2012 information related only to the Rashtriya Rifles unit of the Indian Army.

The agencies of the Ministry of Home Affairs refused to share information by stating they were exempted from the RTI Act. Subsequently, through its order dated 7 January 2014, the CIC partly allowed for certain information to be shared. But, the CIC upheld the privacy of the alleged perpetrators and stated that the FIR no., name of alleged perpetrator and “details of incident” cannot be released. But, contradictorily it allowed for allegations in brief to be provided, along with number of cases, and punishment/award granted. In response to this, the Central Industrial Security Force stated that no court-martials or enquiries had been conducted by it in Jammu and Kashmir between 1990 and 2011. The Sashastra Seema Bal [SSB], during the proceedings [and reflected in the final CIC decision], stated that the court-martial rules only came into effect on 1 August 2009. Further, that the SSB was shifted from Jammu

23 Research Interview conducted with a senior police officer, Budgam, 2005.

24 By communication dated 18 June 2012, further information on cases relating to the RR was provided and related to the time period between 1999 and 2011. Once again, only **seven** officers were said to have been subject to the court-martial process. Only three of these cases dealt with potential human rights violations. Information on Major Rehman Hussain was a repetition. Information was provided on the conviction by court-martial of Captain Ravinder Singh Tewatia, but no mention is made of the fact that this judgment was overturned on appeal before the High Court. The Government of Jammu and Kashmir chose not to appeal this judgment. Finally, Major Arvid Rishi was found not guilty for murder. By communication dated 22 June 2012, further information was provided on a case of two RR personnel [in the context of information on sanction for prosecution under AFSPA related cases where court-martials were conducted], Naik [Corporal] Harbhajan Singh and Rifleman Gurtej, who were dismissed from service and punished by imprisonment for 10 years for the rape of a woman.

and Kashmir from 2001 when it came under the control of the Ministry of Home Affairs. Even prior to 2001, there were no human rights cases against it. By communication dated 5 March 2014, the Indo-Tibetan Border Police Force provided information that only 6 cases have been subject to enquiry. All relate to human rights violations to varying degree. While mostly no action was deemed required, in a case of a rape, the alleged perpetrators were dismissed from service for forcible entry into the house and it appears the rape charge was dismissed. By communication dated March 2014, the Central Reserve Police Force gave information related to three cases. In the case of detention and molestation of girls, dismissal of service was handed down. By communication dated 3 March 2014, the Border Security Force provided information that 10 court-martials had been carried out for cases of human rights violations, and six cases of corruption. In all the cases of corruption, the alleged perpetrators were found guilty, and strong punishments handed down, including one year rigorous imprisonment for inducement of Rs. 5000 under threat of injury to a civilian.

Despite repeated statements by Indian army authorities on the number of armed forces personnel punished in court-martials there is complete denial when any details/information on these convictions are sought.

Even in a handful of cases where perpetrators have been punished, severe delays have been caused in implementing the sentences due to the accused filing appeals and/or review in the regular criminal courts against their convictions. The rape of two women in Doda District on 14 February 2000, allegedly by Captain Ravinder Singh Tewatia and SPO Bharat Bhushan is a case at hand. The alleged perpetrators came to the residence of the victims at about 8:00 pm and asked the family members to leave the house on the pretext of recording their statements. While two other alleged perpetrators kept guard at a local inn, Captain Ravinder Singh Tewatia and SPO Bharat Bhushan raped the two women in two separate rooms.

Two separate chargesheets were filed on 1 April 2000 at the Chief Judicial Magistrate (CJM), Banihal under Sections 376 (Rape), 452 (House trespass after preparation for hurt/assault/wrongful restraint), 342 (Wrongfully confining person) and 166 Ranbir Penal Code, 1989 (RPC). While SPO Bharat Bhushan was committed for trial to the court of Additional Sessions Judge, Ramban, Captain Ravinder Singh Tewatia was tried by a Summary General Court-Martial [SGCM] and was found guilty u/s 376 (1) [Rape] Ranbir Penal Code, 1989 [RPC] and was sentenced vide order dated 1 October 2000 to dismissal from service and imprisonment for seven years. Captain

Ravinder Singh Tewatia challenged the order of 1 April 2000 by the CJM, Banihal before the Additional Sessions Judge, Ramban, which was rejected on 14 December 2000, and then filed Criminal Revision no. 11/2001 before the High Court of Jammu and Kashmir. Captain Ravinder Singh Tewatia also challenged the findings of the SGCM on 1 October 2000 [which was confirmed by the Confirming Authority on 14 December 2000] before the High Court, Jammu bench, in Original Writ Petition [OWP] 742/2001. The final judgment in this case by the High Court was on 31 December 2002. The judgment of the SGCM was set aside. Criminal Revision no. 11/2001 was considered infructuous and disposed off. The High Court considered the medical report on record, which found evidence of recent sexual assault. The Union of India, Ministry of Defence, filed a Letter Patent Appeal [LPA no.17/2003] before the Jammu bench of the High Court that remains pending before the court.²⁵

Conclusion

Court-martial and other equivalent procedures are unacceptable and unjust for any equal and fair judicial system. Court-martials promote impunity and hinder justice and accountability for grave crimes. There is growing consensus that "Because military courts do not have enough statutory independence, their jurisdiction must be limited to specifically military infractions committed by members of the military, excluding serious crimes under international law which must come within the jurisdiction of the ordinary courts."²⁶

The nuts and bolts of the India military tribunals prove that it was never envisaged to operate in areas such as Jammu and Kashmir or the Northeast, where the Indian armed forces are implicated in heinous human rights crimes against the civilian population. The Army Act was enacted for two main purposes: firstly, to punish army personnel for disciplinary infringements, including committing offences against the army; secondly, to provide an enforceable code of conduct for war times against the enemy. The legal design of the Army Act, 1950 makes it clear that it was never meant to operate in civilian areas including Kashmir. Therefore, the impunity of the armed forces in Kashmir is precisely because these acts never envisaged a situation of conflict in a civilian area such as Kashmir. It was only equipped to deal with a traditional cross border war, and not a conflict, where the army is operating in a civilian area. Consequently, court-martial proceedings under the Army Act or other Acts governing the paramilitary forces such as The Border Security Forces Act, 1968, or The Central Reserve Police Force Act, 1949 can never deliver justice in a fair and independent manner for committing atrocities against civilians in conflict areas.

Furthermore, even the Indian Central government

25 This case is analyzed in greater detail in the very next chapter of this report titled "Alleged Perpetrators..."

26 Final report on "Question of the impunity of perpetrators of human rights violations (civil and political)," prepared by Louis Joinet for the Commission on Human Rights, E/CN.4/Sub.2/1997/20, June 26, 1997, para. 38.

appointed Justice Verma Committee made scathing remarks that “impunity for systematic or isolated sexual violence in the process of Internal Security duties is being legitimized by the Armed Forces Special Powers Act, 1958.”²⁷ The Justice Verma Committee recommended that sexual violence against women by members of the armed forces or uniformed personnel must be brought under the purview of ordinary criminal law. It also recommended that Section 6 of the AFSPA, 1958 [equivalent of Section 7 of the Jammu and Kashmir AFSPA] should be amended to exclude the requirement of sanction for rape and other criminal offences against women outlined in the Indian Penal Code, 1860. The proposed amendment by the Justice Verma Committee read as follows:

“AMENDMENT TO THE ARMED FORCES (SPECIAL POWERS) ACT, 1958

1. The following amendment shall be made to Section 6 of the Armed Forces (Special Powers) Act, 1958:

No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.

Provided that, no sanction shall be required if the person has been accused of committing an offence under Section 354, Section 354A, Section 354B, Section 354C, Section 376(1), Section 376(2), Section 376(3), Section 376A, Section 376B, Section 376C, Section 376D, Section 376D or Section 376E of the IPC.”

The Criminal Law (Amendment) Act, 2013 incorporated several suggestions made by the Justice Verma Committee but failed to make these crucial changes with regard to sexual violence in conflict areas including the above amendment, which could have been a step in the right direction.

On 30 April 2010, the Indian Army killed three innocent Kashmiri civilians Shahzad Ahmad Khan (27), Riyaz Ahmad Lone (20), and Mohammad Shafi Lone (19) belonging to Nadihal village in Baramulla by falsely dubbing them as Pakistani infiltrators along the Line of Control in the Machil sector. Seven army personnel including two officers were punished in a General Court Martial for the Machil fake encounter. Machil is the exception where army personnel were found guilty in the court martial proceedings. Mostly, the army and paramilitary in Kashmir have escaped any criminal liability for committing grave human rights violations. Moreover, the structural and procedural lack of fairness of military tribunals remain despite the one off conviction.

Jammu Kashmir Coalition of Civil Society in its press release at the time of the Machil court-martial conviction identified the problems of the rare conviction as follows: “the Macchil conviction is a political decision. The conviction was reportedly done two months ago, but has only now been made public,

on the eve of the assembly elections in Jammu and Kashmir. Further, the conviction is now to be confirmed by the Northern Army Commander. Besides, the fact that to begin with a court-martial was held, and not a trial in a civilian court, it is clear that the court-martial system is conscious of and guided by larger political interests. Therefore, while the Pathribal case is covered up, the Macchil case is not. In the case of Pathribal, there was institutional support and approval, manifested by the visit of L.K. Advani, then Deputy PM, of the BJP led government, to congratulate the Pathribal perpetrators.”

Finally, Military Tribunals compromise the basic principle of equality before the law or equal treatment before the law. While the Pathribal victims wait for justice, we know it is only when court-martials are replaced by an open, transparent and fair trial in a regular independent court system, can the victims of armed forces atrocities in Kashmir even begin to expect justice.

27 Justice J. S. Verma, Reports of the Committee on the Amendment to Criminal Law, 23 January, 2013, available at <http://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committee%20report.pdf>

CHAPTER 4: ALLEGED PERPETRATORS - AGENTS OF VIOLENCE

Part A: Introduction

This chapter serves as an illustration of the violence faced by the people of Jammu and Kashmir at the hands of specifically identified armed forces personnel.

This chapter documents 333 case studies of enforced disappearances, extra-judicial killings, sexual violence and torture and is a result of many years of documentation. The starting point has been the Jammu Kashmir Coalition of Civil Society publication “Informative Missive” that has over the years collated numerous case studies and stories of human rights violations. With a focus on cases where there were identified accused persons, IPTK and APDP approached the family members of the victims and the government, armed forces and judicial/quasi-judicial institutions for the official record on these cases. In a context where any and all public access to information on cases is limited, IPTK and APDP deemed it necessary to use the State's own mechanisms – for example the court, or the “Right to Information” [RTI] statutes – to access the State version on each of these crimes.

Due to limited resources, not all families could be contacted. In addition, there is a continued fear of speaking against the State. While many of the families contacted have provided testimony along with full self-identification, some witnesses requested anonymity while others chose not to have their testimonies recorded and/or used at all. In the case studies, where testimony has been provided by a witness – signed and consented – it has been so indicated.

The RTI Act has been used across these cases. Jammu and Kashmir has a separate RTI Act of 2009 and a separate Information Commission as well. The Indian law of 2005 applies to the Government of India ministries/authorities. RTI applications have broadly been either case specific OR on broader issues that pertain to all human rights violations in Jammu and Kashmir.

RTI was filed to the Jammu and Kashmir police on First Information Reports [FIR] in cases where FIR details were available and the investigation record and status of investigations were sought. The FIR is the starting point of a police investigation and is a record of information received of a commission of a crime. It is on this FIR that the police begin their investigations. In a majority of cases the Jammu and Kashmir police do not file FIRs. This is either due to the fear of the armed forces, as the armed forces have overarching authority and control and they can direct the police accordingly, or because the Jammu and Kashmir police is itself involved in the crime, or, as is often the case, because the police assists the

accused armed forces in ensuring that there is no accountability for their actions. The police are instrumental in ensuring that human rights violations are covered up. This chapter has numerous examples of such cases where there is no FIR. In addition, families themselves have felt unable to approach the police to file the FIR – due to fear of the police themselves and the accused forces involved [though this does not excuse the police as they could file the FIR themselves on receipt of information of a crime committed]. The information received, and referred to in each case study where relevant, highlights both the *modus operandi* of the armed forces [for example, extra-judicial killings are often termed as “encounters” as is evident by comparing the FIRs with the family testimony and on occasion with the subsequent police investigations], and the manner in which the State institutions - primarily the police – have protected the armed forces [or for that matter themselves]. In cases where FIRs have been filed, the police have only rarely carried out proper and fair investigations and have mostly closed the cases as untraced.

RTI was filed to the Jammu and Kashmir High Court on petition numbers in cases where petitions were filed by the victim families and the entire case record and status were sought. The High Court has over the years become a repository of the human rights violations in Jammu and Kashmir as it was often seen as the first and last resort for relief. Therefore, information was sought from the High Court on the petitions filed, responses of the State and orders passed. The information received, and referred to in each case study where relevant, illustrates that in Jammu and Kashmir the judiciary has chosen not to confront the armed forces and the larger Indian State project of control and occupation despite having the constitutional powers to do so. Strong and effective orders that could have at least minimized the effects of violence have rarely been passed. When passed, and ignored by the armed forces, the High Court does not ensure implementation. But the High Court proceedings themselves [irrespective of final orders] serve as indictments. Whether by the responses of the armed forces or government ministries, or by judicial enquiries ordered by the High Court, the case against the alleged perpetrators is *prima facie* established.

In addition to the above specific RTIs, broader areas were identified and information was sought, as follows:

- **Sanction for Prosecution** under the Armed Forces (Jammu and Kashmir) Special Power Act, 1990 [AFSPA] [Annexure 6]. The fundamental problem in Jammu and Kashmir is not draconian laws such as AFSPA. It is instead the political control that the Indian State has sought to maintain over Jammu and Kashmir, through the armed

forces presence and violence and by ensuring absolute impunity. A part of this impunity is the actual system – police, courts – and laws, of which AFSPA is one example. To the extent that AFSPA is a poor law that at a later stage [only after police investigations are completed] prevents trial, it has been analyzed. RTIs were filed to the Ministry of Defence and Ministry of Home Affairs both Government of India Ministries that are the competent authorities to grant/deny sanction for prosecution under AFSPA. In addition, RTIs were filed to the Home Department, Government of Jammu and Kashmir – by whom the request for sanction is made. **Annexures 7, 8 and 9** are responses from Government of Jammu and Kashmir. Annexure 7 dated 6 September 2011 is a list of 50 cases where sanction for prosecution was requested. Annexure 8 is a communication dated 23 February 2012 that sanction for prosecution has never been granted. Annexure 9 is response from the Jammu and Kashmir Police dated 26 March 2013 regarding the 10 cases pertaining to the Central Reserve Police Force [CRPF] where sanction for prosecution has been sought. Sanction has been denied in 6 cases and pending in the others. **Annexure 10 and 11** are responses from the Ministry of Defence. Annexure 10 is an affidavit before the High Court [this was acquired from the court itself] on sanction cases. Annexure 11 is dated 10 January 2012 and is on 24 sanction cases only. This RTI continues to be pursued before the Chief Information Commission [CIC], New Delhi. **Annexure 12** relates to sanction for prosecution information from Ministry of Home Affairs and is the 7 January 2014 decision of the CIC on CRPF sanction for prosecution cases. The CRPF submitted before the CIC that there were a total of 8 cases that been sent from Jammu and Kashmir for sanction for prosecution of CRPF personnel. In 6 cases sanction had been declined. 1 case was under consideration and in 1 case, sanction had been granted. The CIC upheld the right of the CRPF to not provide any information on sanctions [beyond their submissions]. Of importance here is the contradiction between the information provided by the Jammu and Kashmir Police and the CRPF. The Jammu and Kashmir Police states that out of 10 cases there has not been a single grant of sanction, whereas the CRPF states that in one case sanction was granted. Once again, as full information is not provided there is no scope for any verification of either claim. One may also consider in this regard, Case no.30 in the sub-chapter on extra-judicial killings where the victim Bagh Singh from Baramulla was killed by a BSF Deputy Commandant. On file is a communication wherein the Ministry of Home Affairs informs the Government of Jammu and Kashmir that sanction for prosecution has been granted for the accused who is serving a 15 year sentence on a drug related conviction. Once again, Government of Jammu and Kashmir in their response to RTIs have never mentioned this case. The BSF has not provided any sanction related

information. While the status of the trial, if any, is not known, it is possible that sanction was granted in this case as the accused had already been convicted elsewhere. The only other response was by communication dated 21 September 2012 where the Indo-Tibetan Border Police Force [ITBP] stated that no case relating to ITBP personnel had been received from Jammu and Kashmir.

- **Court-Martials.** The preceding chapter has dealt with the role of court-martials in Jammu and Kashmir. As stated already, an aspect of court-martials has been zero transparency. The Ministry of Defence provided limited information with regard to court-martials of the Rashtriya Rifles [RR] **[Annexures 13, 14 and 15]**. Further information on these RR court-martials, and on other army units was sought before the CIC. By decision dated 18 October 2012, **Annexure 16**, the CIC dismissed the appeal filed based purely on the submissions of the army that “the requisite information has already been supplied to the appellant vide their letter dated 28.3.2012” [a reference to Annexure 13]. Similarly, in the case of the Ministry of Home Affairs the matter was before the CIC who granted only part information to be provided by its decision dated 7 January 2014 **[Annexure 17]**. The CIC upheld the right of the paramilitary units to not provide certain court-martial information including the name of the accused. As a consequence, limited and relevant information was provided by CRPF, March 2014 **[Annexure 18]**, Border Security Force [BSF], 3 March 2014 **[Annexure 19]**, and ITBP, 5 March 2014 **[Annexure 20]**. The Central Industrial Security Force [CISF] and the Sashastra Seema Bal [SSB] stated that their units had held no court-martials vis-à-vis cases from Jammu and Kashmir.
- **Standard Operating Procedures.** The armed forces state they operate within the contours of the law and have internal mechanisms that ensure that no “excesses” are committed. As evidenced by the 333 cases in this chapter, the other cases referred to in this report, and the living reality of the people of Jammu and Kashmir, this is not true. To understand the framework within which the armed forces claim to operate, RTIs were filed to the Ministry of Defence, Ministry of Home Affairs, and Jammu and Kashmir Police on their “Standard Operating Procedures”. While the Ministry of Defence did not even respond to the RTI, the Ministry of Home Affairs and the Jammu and Kashmir Police claimed exemption from providing this information as disclosure in this case would go against the “sovereignty”, “integrity” and “security” of the “nation”. This position has been challenged in the respective Information Commissions, and in the case of the police, the Jammu and Kashmir State Information Commission passed a decision on 5 August 2015 directing that the information be provided within 15 days. Till the publication of this report, no information has been received.
- **Identification of perpetrators.** Identification of accused persons responsible for crimes is a challenge. This difficulty is compounded by the

passage of time, accompanied by no investigations. Therefore, in Jammu and Kashmir, the very passage of time works towards greater impunity. As a consequence, in numerous cases, witnesses are unable to remember the names of the accused persons. Designations, nicknames, aliases, and parts of names are remembered. In addition, and once again relevant in any context where there is widespread and systematic violence such as Jammu and Kashmir, crimes are rarely by single, individual perpetrators. There are invariably a group of persons involved in crimes. Further, superiors/commanders are also involved in the planning and execution of the crimes. To address this issue of identification of perpetrators, RTIs were filed to the Jammu and Kashmir Police [similar RTIs will be filed for the army and paramilitary as well in due course] seeking information on the names and duration of service, from 1989 to date, in Jammu and Kashmir, of all Station House Officers [SHO], Superintendents of Police – District Police and Special Operations Group [SOG]. Comprehensive information was provided with regard to the District Superintendents of Police [Annexure 21] but no information was provided on the Superintendents of Police of SOG or on the SHO's. Exemptions were sought on grounds that the information might endanger the lives of the police personnel. The matter is pending before the Jammu and Kashmir Information Commission.

- **SOG and Command Structure.** The SOG forms part of the Jammu and Kashmir Police and is concerned with counter-insurgency operations in every district of Jammu and Kashmir. But, it appears there has been uncertainty on the command structure within which the SOG operates. Further, the date of formation of the SOG is not known. Finally, numerous witnesses refer to the SOG and the Special Task Force [STF] interchangeably. To clarify these issues a RTI was filed to the Home Department, Government of Jammu and Kashmir on the formation, terminology and command structure of the SOG/STF. Limited information was provided in response [Annexure 22]. While no details were provided on the formation and terminology, two orders dated 23 May 2000 and 24 February 2003 were provided. The 23 May order states that the SOG will function under the administrative control of “concerned District Superintendents of Police” who in turn are accountable to the Deputy Inspectors General of Police [DIG] of the Range. The DIG is accountable to the Inspector General, Operations. The 24 February 2003 order is titled “Assimilation of the personnel of SOG in the regular police force – Re-designation of posts of SP (Ops) as Addl. SP”. The order states that the post of Superintendent of Police, Operations shall be re-designated as Additional Superintendent of Police of the District and all counter-insurgency operations in the District will be under the supervision of the District

Superintendent of Police. Therefore, these two orders suggest that the SOG did not operate under the District Superintendent of Police between 23 May 2000 and 24 February 2003, but instead under the “concerned” District Superintendent i.e. Superintendent of Police, Operations. This information clarifies the *de jure* structure of the SOG, but not necessarily who had “effective control” [as required under the principle of command responsibility] in individual cases or time periods.

- **Awards and Promotions.** One aspect of the violence has been the creation of incentives – in the form of monetary awards, other awards and out of turn promotions– for the killing of “militants”. In Jammu and Kashmir where the line between combatant and non-combatant is itself continuously ignored, and the entire population is held suspect, incentives prove highly problematic. On 24 September 2012, in response to RTI request filed on awards [non-monetary] and out of turn promotions to the Jammu and Kashmir Police for anti-militancy operations since 1989, it was stated that 2226 police officials had received out of turn promotions for anti-militancy operations as per Government Order No. Home-3 (P) of 2000, dated 6 January 2000 for “consistently exceptional performance on the anti-militancy front” [Annexure 23]. 560 police officials had received gallantry awards for their “gallant acts”. But, the names of these persons were not provided as it was felt the disclosure would endanger them. Further, on a further response of 25 October 2012 it was stated that the names and details of militants killed that formed the basis of these awards and promotions could not be provided as the disclosure would “hit the sentiments of the general people and create unrest and law and order problem” [Annexure 24]. The secrecy that shrouds the identities of the recipients and the reasons for the bestowal of these supposedly public honours is revealing, especially in light of cases detailed in this report where implicated individuals were subsequently rewarded.

This chapter is divided as per the four major crimes: enforced disappearances, extra-judicial killing, sexual violence and torture. Cases have been divided across these chapters, but there are overlaps as often a victim has faced more than one of the above forms of violence. Within the chapter the cases are arranged chronologically.

The documents referred to in the case studies are of different types: FIRs, statements before police and /or magistrates, police final reports [closure reports or charge sheets], High Court petitions, objections, other documents forming a part of the court record such as compliance reports, status report, judicial enquiries, Jammu and Kashmir State Human Rights Commission [SHRC] documents from complaints to

objections, police submissions and final orders. Further, documents/information from Government of India and Jammu and Kashmir, including through RTI, have been included. Each case study begins with details of the victim and the alleged perpetrator, followed by case information that includes the allegations, and available documentation including whether relief/compensation was provided to the families. Government of Jammu and Kashmir provides Rs. 1 lakh ex-gratia relief to the family of the victim for death caused by violence attributable to breach of law and order/civil commotion [**Annexure 25**], and compassionate employment for one family member of the victim for death caused in militancy related action, or Rs. 4 lakhs in the alternative [**Annexure 26**]. As seen in the case studies, families are put through an arduous process to even receive relief/compassionate employment. The focus of the case studies is on the status of investigations and the evidence against the alleged perpetrator.

While the demand of IPTK and APDP is for independent and impartial investigations on each of these crimes, and there is no pronouncement on the guilt of the “alleged perpetrators”, *prima facie* evidence [from official record and testimonies] is provided that warrants further investigations

TABLE AND LIST

Total number of cases: 333

Total number of alleged perpetrators: 972

Table: Distribution of Alleged Perpetrators by Affiliation and Rank

Numbers of Army		Numbers of Military and Para-military forces			Numbers of J&K Police		Numbers of Government Gunmen/ Associates	Total Number of Alleged Perpetrators
464		161			158		189	972
		BSF	CRPF	Other				
		102	39	20				
Major General	1	Additional Director General	1		Director General	1		
Brigadier	7	Inspector General	1		Additional Director General	1		
Colonel	31	Deputy Inspector General	4		Inspector General	2		
Lt Colonel	4	Commandant	13		Deputy Inspector General	2		
Major	115	2 nd In-command	1		Senior Superintendent of Police	6		
Captain	40	Deputy Commandant	15		Superintendent of Police	3		
Lieutenant	3	Assistant Commandant	19		Deputy Superintendent of Police	15		
2 nd Lieutenant	4	Other ranks	107		Inspector	22		
JCO	148				Sub-Inspector	11		
Others Ranks	111				Assistant Sub-Inspector	13		
					Other Ranks	82		

List: Alleged Perpetrators**I. ARMY [464]**

1. 2nd Lieutenant N. VidyaSagar, 125th Battalion Jammu and Kashmir Light Infantry [JAKLI], Army
2. 2nd Lieutenant Raghuraj Singh, 4th Rajputana Rifles
3. 2nd Lieutenant Sajju Mathew, 4th Rajputana Rifles
4. 2nd Lieutenant, GS Wani, 22 Grenadiers, Watergam Camp, Kreeri
5. A. Santhanam, A company, 44 Rashtriya Rifles [RR]
6. AjaibUrangh, 15th Assam Regiment, Army
7. Ajay Kumar, Gnr, 29 Rashtriya Rifles [RR], Army
8. Anil Kumar Thakur, Gnr, 29 Rashtriya Rifles [RR], Army
9. Anil Kumar, Gnr, 29 Rashtriya Rifles [RR], Army
10. AvtarKishan, Gdr, 29 Rashtriya Rifles [RR], Army
11. B.B. Teing, Army, Badami Bagh Cantonment Area
12. Brigadier Deepak Bajaj, 7 Rashtriya Rifles [RR]
13. Brigadier Kataria, 68th Mountain Brigade, Army, Trehgam
14. Brigadier Surjit Singh, 167th Field Regiment, Army, Harwan
15. Brigadier V. K. Sharma, Dogra Regiment, Army, Camp Chitarnar, Bandipora District
16. Brigadier, at Brigade Headquarters of 2 Jat, Banihal [as in November 2002]
17. Brigadier, Chairkoot Camp [as in the year 2005]
18. Brigadier, Tapper Camp, Hyderbaig [as of June 1992]
19. Captain [presently Major] Nitin Dutta alias Rambo/Aijaz Khan [both operational names], 33 Rashtriya Rifles [RR], Army, Camp Doodhipora, Tikri, Handwara
20. Captain Adjutant P. Saxena, 9 Rashtriya Rifles, Frisal Camp
21. Captain AthalPrashad, 5th Rajputana Rifles, Army, Camp Kralchak, Barnate
22. Captain Atul Sharma [Operational name: Sameer], In-charge, 22 Rashtriya Rifles [RR], Army, Camp Delina, Baramulla
23. Captain Badshah Khan, 299th Field Regiment, Army
24. Captain Chouhan, 23 Rashtriya Rifles [RR], Army, Camp Ukhral Tehsil, Pogal, Banihal
25. Captain Dinesh Kumar, In-Charge, 30 Rashtriya Rifles [RR], Chatosa Camp
26. Captain G. Rathee, Adjutant, 7 Para, Rashtriya Rifles [RR], Army
27. Captain Gill, 2 Jat, Dori Camp
28. Captain Gorpala Singh, 17 Jammu and Kashmir Light Infantry Rifles [JAKLI], Army
29. Captain Gurjeet Singh Sandal, 29 Rashtriya Rifles [RR], Army, Camp Chekseri, Nipora, Pattan, Baramulla District
30. Captain KunalBakshi, 17 Rashtriya Rifles [RR], Army
31. Captain Manjeet, Kanari Camp, 4 Sikh Light Infantry
32. Captain Mohit, 8th Battalion, Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Shahpur, Haveli, Poonch
33. Captain Naresh, NCA 7th JAT Regiment, Army
34. Captain O.S Shyam Sunder, 4th Rajputana Rifles
35. Captain Piyara Singh Toor, Army
36. Captain PuneetDutta, 7 Rashtriya Rifles [RR] Camped at Khundroo
37. Captain Pushpinder, 15 PBOR [Accounts office], 10 Jammu and Kashmir Rifles, Army
38. Captain R. Awasthi, 24 Rashtriya Rifles [RR], Army, Camp Magam
39. Captain Rahul, 29 Rashtriya Rifles [RR], Army, Camp Stadium, Baramulla
40. Captain Rajesh Sharma, 29 Rashtriya Rifles [RR], Army
41. Captain Raju / Captain Rajee, 19 Rashtriya Rifles [RR], Army, Badami Bagh Cantonment, Srinagar
42. Captain Raman Verma, 15 Grenadiers
43. Captain RanjanMahajan, 4th Rajputana Rifles
44. Captain Ravinder Singh Tewatia, Commander, C-Company, 12 Rashtriya Rifles [RR], Army, Upper Gund, Banihal
45. Captain S.S. Pathania, 7 Rashtriya Rifles [RR] Camped at Khundroo
46. Captain S.S. Yadav, 10 Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Dairy Farm
47. Captain S.S. Chauhan, First Sector, 2 Rashtriya Rifles [RR], Army, Camp Khanbal
48. Captain Satish S. Kakray, 28 Rashtriya Rifles [RR], Army, Camp Sheeri
49. Captain Sharma, 22nd Battalion, Grenadiers, Army
50. Captain T.K. Chopra, 15 PBOR [Accounts office], 10 Jammu and Kashmir Rifles, Army
51. Captain Tiwari, 197 Field Regiment, Barawall Camp
52. Captain V. R. Godekar, 59th Field Regiment, Army, Camp Batapora, Tangmarg
53. Captain Vineet, 5th Sikh Light Infantry [Sikh LI], Army
54. Captain Vishal Dhobi, Wusan army Camp
55. Captain Yadav, 2/8 Gorkha Rifles, Army
56. Captain, BS Sambyal, Adjutantfor Officiating Commandant, 29 Rashtriya Rifles [RR], Jetty Camp
57. Captain, Ganesh Bhat, Adjutant for Commanding Officer
58. Captain, In-Charge, Camp Goha [as of 15 March 1999]
59. Cdo. Dalbir Singh, Army, Badami Bagh CantonmentArea
60. Chanchal Singh, ALD, 33 Rashtriya Rifles [RR], Army, Camp Doodhipora, Tikri

61. Chattar Singh, Gdr, 29 Rashtriya Rifles [RR], Army
62. CHM Mohammad Aslam, Company Havaladar Major, 28 Rashtriya Rifles [RR], Army, Camp Heewan, Baramulla
63. CHM Omprakash, Company Havaladar Major, 1 Rashtriya Rifles [RR], Army
64. Colonel [Brigadier Retired] Gulshan Rai, 2 Field Ordnance Depot [FOD], Army
65. Colonel A.K. Gaur, Commanding Officer, 10 Bihar Regiment, Hyderbaig Camp, Pattan
66. Colonel Bali, Commanding Officer, 24 Rashtriya Rifles [RR], Gushi picket [Hiri Camp]
67. Colonel Chauhan, Commanding Officer, 4 Sikh Light Infantry
68. Colonel D.K. Pathania, Commanding Officer, 4 Rajput Regiment, Army
69. Colonel Dharmender Gupta, Deputy Brigade Commander, 6-Sector, Rashtriya Rifles [RR], Army, Potha, Surankote
70. Colonel G.P.S. Gill, Para Punjab, Personal Advisor [PA] to General Officer Commanding [GOC] of 15 Corps, Lieutenant General Nirbhay Sharma, Army Headquarters, Srinagar
71. Colonel Ganpathy, 35 Rashtriya Rifles [RR], Army, Budgam
72. Colonel Ghosh, 10 Bihar Regiment, Manasbal camp, Safapora area
73. Colonel I.J. Peoples, 7 Rashtriya Rifles [RR] Camped at Khundroo
74. Colonel Joneja, 49 Rashtriya Rifles [RR], Army
75. Colonel K. K. Sharma, 1 Rashtriya Rifles [RR], Army, Camp Aishmuqam
76. Colonel K.S. Dalal, 4th Rajputana Rifles
77. Colonel Mann Singh, 18th Dogra Regiment, Army
78. Colonel Naresh Sood, 18 Rashtriya Rifles [RR], Kooligam Camp, Kupwara
79. Colonel of Frisal camp [on 29 October 1994]
80. Colonel P. K. Saniyal, Commanding Officer, 12 Maratha Light Infantry [MLI], Army, Camp Mirgund, Kuligam, Lolab, Kupwara District
81. Colonel P.S. Gothra, Commanding Officer, 25 Rashtriya Rifles [RR], Army, Draba, Surankote
82. Colonel PK Ray, 2 Sikh Regiment
83. Colonel R. K. Singh, 9 Para-Commandos, Army, Camp Srigufwara, Islamabad
84. Colonel Rajan Jamwal, Commanding Officer, 20th Punjab Infantry, Army
85. Colonel Rajbeer Singh, 7 Para, Rashtriya Rifles [RR], Army
86. Colonel S. Raman Thakur [also referred to as "Thakar"], 2nd Battalion Garhwal Rifles / 121st Battalion Territorial Army [all three units are referred to in the documentation], Army, Camp Sharifabad
87. Colonel S.K. Malik, 20 Grenadiers, Army, Camp Boatman Colony, Bemina, Srinagar
88. Colonel Sharma, Army, Nachlana, Headquarters
89. Colonel, 19 Rashtriya Rifles [RR], Army, Camp Manigam, Ganderbal
90. Colonel, 322 Air Defence Artillery [ADA], Army
91. Colonel, 47 Rashtriya Rifles [RR], Army [as of April 2007]
92. Colonel, 8th Battalion Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Saklot Block, Mandi
93. Colonel, Commanding Officer, 18 Rashtriya Rifles [RR], Kooligam camp [as in the year 2005]
94. Colonel, Watargam Camp [as of May 1998]
95. Commandant of Post, Nikhil Tiwari, 3 Grenadiers, Army, Camp Zurhama
96. Commander at the Rashtriya Rifles [RR] army camp, SICOP, Bijbehara [as in 1993] [Referred to as "Singh Sahib"]
97. D. J. Singh, 33 Rashtriya Rifles [RR], Kangan Camp
98. D. N. Gupta, 5th Sikh Light Infantry [Sikh LI], Army
99. Dr. Sumon Singh, 103rd Battalion Territorial Army
100. George [operational name], 2 Rashtriya Rifles [RR], Khanabal Camp
101. Guard Commander Shraavan Singh, Palhallan army camp
102. Gunner [Gnr] Bali Ram, Army
103. Gunner [Gnr] Ganishyam, Army
104. Gunner, Deepak Godara, 29 Rashtriya Rifles [RR], Army
105. HariChander, Gdr, 29 Rashtriya Rifles [RR], Army
106. Hari Ram, Gdr, 29 Rashtriya Rifles [RR], Army
107. Harvinder Singh, Army
108. Havaladar Balakrishna Sohan [Retired], 7 Para, Rashtriya Rifles [RR], Army
109. Havaladar Balbir Singh B, 4th Rajputana Rifles
110. Havaladar Balbir Singh, 103rd Battalion Territorial Army
111. Havaladar Bhagat Singh C, 4th Rajputana Rifles
112. Havaladar Bir Singh, 4 Rajput Regiment, Army
113. Havaladar Dalel Singh C, 4th Rajputana Rifles
114. Havaladar Daya Singh C, 4th Rajputana Rifles
115. Havaladar Deep Chand C, 4th Rajputana Rifles
116. Havaladar Dev Karan Singh B, 4th Rajputana Rifles
117. Havaladar Dharambir Singh B, 4th Rajputana Rifles
118. Havaladar Dharambir Singh B, 4th Rajputana Rifles
119. Havaladar Hamanta Bordoloi, 119th Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soitang
120. Havaladar Harbhajan Singh, 8 Sikh Regiment
121. Havaladar Harender Singh D, 4th Rajputana Rifles
122. Havaladar Harminder Singh / Harjinder Singh,

- 31 Counter Intelligence Unit [CIU], Army
123. Havaladar Inder Singh A, 4th Rajputana Rifles
124. Havaladar Indraj Singh HQ, 4th Rajputana Rifles
125. Havaladar J.M. Khand / G.M. Khan, 31 Counter Intelligence Unit [CIU], Army
126. Havaladar Jagdesh, 5 Rajputana Rifles, Army
127. Havaladar Jagdish, 10 Rashtriya Rifles [RR], Army
128. Havaladar K.S Ratiala HQ, 4th Rajputana Rifles
129. Havaladar Lal Singh A, 4th Rajputana Rifles
130. Havaladar MaaniDutta, 17 Rashtriya Rifles [RR], Army
131. Havaladar Madan Singh, 5 Rajputana Rifles, Army
132. Havaladar Mahabir Singh C, 4th Rajputana Rifles
133. Havaladar Mansa Ram C, 4th Rajputana Rifles
134. Havaladar Mohan Singh A, 4th Rajputana Rifles
135. Havaladar Moti Singh D, 4th Rajputana Rifles
136. Havaladar Mushtaq Shah, Jammu and Kashmir Police
137. Havaladar Naba Ch. Sinha, 119th Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soiteng
138. Havaladar Pratap Singh HQ, 4th Rajputana Rifles
139. Havaladar Prithvi, NCA 7th JAT Regiment, Army
140. Havaladar Rajan, 28 Madras Army / 28 Rashtriya Rifles [RR], Army
141. Havaladar Ram Niwas, NCA 7th JAT Regiment, Army
142. Havaladar Ritash Singh A, 4th Rajputana Rifles
143. Havaladar Sant Ram B, 4th Rajputana Rifles
144. Havaladar Satya Narayan B, 4th Rajputana Rifles
145. Havaladar Shish Ram B, 4th Rajputana Rifles
146. Havaladar Tahsheldar Singh D, 4th Rajputana Rifles
147. Havaladar Tej Pal Singh B, 4th Rajputana Rifles
148. Havaladar Yadunath Singh A, 4th Rajputana Rifles
149. Havaladar, Sarmukh Singh, Baz Post, 4 Sikh Light Infantry
150. Havaladar, Sudhama Singh Yadav, 29 Rashtriya Rifles [RR], Army
151. JCO Hukum Singh, Junior Commissioned Officer, 17 Rashtriya Rifles [RR], Army
152. JCO Milkha Singh, Junior Commissioned Officer, 322 Air Defence Artillery [ADA], Army
153. Kamal Singh, Gdr, 29 Rashtriya Rifles [RR], Army
154. Kishan Pal Singh, Gdr, 29 Rashtriya Rifles [RR], Army
155. Lance Havaladar Bir Singh B, 4th Rajputana Rifles
156. Lance Havaladar Laxman Singh D, 4th Rajputana Rifles
157. Lance Havaladar Pyare Lal C, 4th Rajputana Rifles
158. Lance Havaladar, BN Das, 29 Rashtriya Rifles [RR], Army
159. Lance Naik [Lance Corporal] Bikram Singh, Army, BadamiBagh Cantonment Area
160. Lance Naik [Lance Corporal] Danpath Singh, 28 Rashtriya Rifles [RR], Army, Camp Sheeri
161. Lance Naik [Lance Corporal] GhanShyam, Army, BadamiBagh Cantonment Area
162. Lance Naik [Lance Corporal] Karan Singh, 2 Rashtriya Rifles [2 RR], Army
163. Lance Naik [Lance Corporal] Pardeep Kumar, NCA 7th JAT Regiment, Army
164. Lance Naik [Lance Corporal] Pretam Singh, 2 Rashtriya Rifles [2 RR], Army
165. Lance Naik [Lance Corporal] Romesh Singh, 119th Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soitang
166. Lance Naik [Lance Corporal] Roshan Kumar, NCA 7th JAT Regiment, Army
167. Lance Naik [Lance Corporal] Vikram Singh, 5 Rashtriya Rifles [RR], Army, Camp Doderhama, Ganderbal
168. Lance Naik Arun Kumar, 10 Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Dairy Farm
169. Lance Naik Balwan Singh B, 4th Rajputana Rifles
170. Lance Naik Bhanwar Singh D, 4th Rajputana Rifles
171. Lance Naik Bhim Singh D, 4th Rajputana Rifles
172. Lance Naik Dharambir Singh B, 4th Rajputana Rifles
173. Lance Naik Hanuman Lal HQ, 4th Rajputana Rifles
174. Lance Naik Hawa Singh B, 4th Rajputana Rifles
175. Lance Naik Nathu Singh D, 4th Rajputana Rifles
176. Lance Naik Om Prakash C, 4th Rajputana Rifles
177. Lance Naik Partap Singh HQ, 4th Rajputana Rifles
178. Lance Naik Puram Singh D, 4th Rajputana Rifles
179. Lance Naik Radheshyam Singh A, 4th Rajputana Rifles
180. Lance Naik Rajpal Singh, 6th Para Regiment, Army
181. Lance Naik Rakesh Kumar B, 4th Rajputana Rifles
182. Lance Naik Rohtash Singh HQ, 4th Rajputana Rifles
183. Lance Naik Santosh Singh D, 4th Rajputana Rifles
184. Lance Naik Shakti Singh, 10 Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Dairy Farm
185. Lance Naik Sini Ram B, 4th Rajputana Rifles
186. Lance Naik Sukhdev Singh, 6th Para Regiment, Army
187. Lance Naik Tirath Singh D, 4th Rajputana Rifles
188. Lance Naik Vijay Pal Singh A, 4th Rajputana Rifles
189. Lieutenant Colonel Brajendra Pratap Singh, 7 Rashtriya Rifles [RR], Camped at Khundroo

- [subsequently Major at the time of commission of crime]
190. Lieutenant Colonel M.M. Singh, 17 Jammu and Kashmir Rifles, Army
 191. Lieutenant Colonel, S.N.Vishnu, Assistant Adjutant General for General Officer Commanding, 19 Infantry Division
 192. Lieutenant Colonel. Patel, Camp-in-charge, 9 Dogra Lettar Camp
 193. Lieutenant Deepak Mohania, 9 Rajputana Rifles
 194. Lieutenant Kehar Singh, 8 JAT Regiment, Army
 195. Lieutenant Verma, 119th Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soiteng
 196. Major A. K. Abbot, 4th Sikh Regiment, Army
 197. Major A.K Mathur, 4th Rajputana Rifles
 198. Major A.K. Morea, 7 Rashtriya Rifles [RR], Army, Camp Chakidaspora
 199. Major Abhay Tiwari [Retired as per information provided in 2009], 197th Field Regiment, Army
 200. Major Achariya, 28 Rashtriya Rifles [RR], Army, Camp Heewan, Baramulla
 201. Major Adjutant, Kus Raj, "5 Guards"
 202. Major Agarwal, 14th Rajputana Rifles, Army, Camp Panzgam, Kupwara
 203. Major Ajit Singh alias Aziz Gharwal, Gharwal Regiment, Palhallan camp
 204. Major Alok Chakrabarti, Company Commander, 1 Rashtriya Rifles [RR], Army
 205. Major Aman Yadav [Operational name: Mushtaq Ahmad], 28 Rashtriya Rifles [RR], Army
 206. Major Amit Saxena, 7 Rashtriya Rifles [RR], Camped at Khundroo
 207. Major Anil Kumar, 2 Rashtriya Rifles [RR], Army, Camped at Khundroo
 208. Major Arora, 5 Rashtriya Rifles [RR], Army, Camped at Batpora, Manzgam, Hakoora, Islamabad District
 209. Major Ashok Kumar, 17 Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Watergam
 210. Major Ashwani Kumar, 24 Rashtriya Rifles [RR], Panzoo Camp
 211. Major Avtar Singh, 103rd Battalion Territorial Army, deployed at Rawalpora, Srinagar [deceased]
 212. Major Bakar Singh, 10 Rashtriya Rifles [RR], Army
 213. Major Bhaderwah, Army, Chanam Camp
 214. Major Bhim Singh, 34 Rashtriya Rifles [RR], Army, Camp Beerwah
 215. Major Chauhan, 41 Rashtriya Rifles [RR], Army
 216. Major Chinapa, 28 Rashtriya Rifles [RR], Army, Camp Heewan, Baramulla
 217. Major Chiranjeet Sharma, Army, Camp Mangeta
 218. Major D.K.Sharma, 29 Rashtriya Rifles [RR], Army
 219. Major Depankar Sahai, Army
 220. Major Devinder Paul Singh [Operational name: Tiger], 15th Punjab Regiment, Army, Camp Filtration Plant, Bagh-e-Islam
 221. Major Dharamandra Singh, 10 Bihar Regiment, Army
 222. Major G.K. Bhatila, 30 Rashtriya Rifles [RR], Army, Camp Ghanoh
 223. Major G.L.Yadav, Northern Command Liaison Unit [NCLU], Army
 224. Major Ganpati, 28 Rashtriya Rifles [RR], Army
 225. Major Gaurav, 9 Paracommandoes, Army, Camp Bafiaz
 226. Major General Ajay Saxena, 7 Rashtriya Rifles [RR], Camped at Khundroo [Colonel at the time of commission of crime]
 227. Major George of SICOP Camp, Islamabad
 228. Major Gill, 9 Rashtriya Rifles, Panchgam Camp
 229. Major GS Gill, 8 Sikh Regiment
 230. Major Gupta, 10 Bihar Regiment, Hyderbaig Camp, Pattan
 231. Major Gurpal Singh, In-charge, 17 Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Chatoosa
 232. Major Gurpal Singh, Nowgam Camp
 233. Major H.P.Singh, 167th Field Regiment, Army, Harwan
 234. Major H.S Jatrana, 4th Rajputana Rifles
 235. Major Hardeep Johar, 8 JAT Regiment, Army
 236. Major Inder Verma, Army
 237. Major Inderjeet Singh, Chowgam army camp
 238. Major Jagtar Singh, 1 Rashtriya Rifles [RR], Army, Camp Aishmuqam
 239. Major Jitender Bhakar, 29 Rashtriya Rifles [RR], Army, Camp Odoora, Sheeri, Baramulla, and headquartered at Uplana, Singhpora, Baramulla
 240. Major Joshi, 10 Bihar Regiment, Safapora Camp
 241. Major K. Bhattachariya [Operational name: Waseem], 59th Field Regiment, Army, Camp Batapora, Tangmarg
 242. Major Khushwa, 2 Rashtriya Rifles [RR], Army, Camped at Khundroo
 243. Major Kishore Malhotra, 35 Rashtriya Rifles [RR], Army
 244. Major Krishna, 44 Rashtriya Rifles [RR], Veterinary Camp stationed near Shopian Police Station
 245. Major Lamba, 29 Rashtriya Rifles [RR], Army, Camp Wussan, Pattan
 246. Major M.K Mathur, 4th Rajputana Rifles
 247. Major Manoj, 10 Bihar Regiment, Safapora Camp
 248. Major Maurya, 4 Rajput Regiment, Army
 249. Major Mohammad Anwar [Code name], F Company, 28 Rashtriya Rifles [RR], Army, Chatoosa Camp, Rafiabab
 250. Major Multani Veer Singh, 14th Dogra Regiment, Headquarters, Army, Langate
 251. Major Nagori, 17 Rashtriya Rifles [RR], Army
 252. Major Nayar [Operational name: Sunder Ram

- Wakate], 20 Grenadiers, Army
253. Major P.K.Singh [Lieutenant Colonel as of 2009], 197th Field Regiment, Army
254. Major P.S. Lamba, 28 Rashtriya Rifles [RR], Army, Camp Heewan, Baramulla
255. Major P.S. Patil, Second in Command, 10 Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Dairy Farm
256. Major Pandey, Chaksari army camp, Pattan
- 257.** Major Parera, 3Kumaon Rifles, Army
258. Major Parkash, Mahar Regiment, Army, Camp Satwara
259. Major Pradhan, Rashtriya Rifles [RR], Khanabal Camp, Islamabad district
260. Major Qayoom Khan [Code name], Wusan Khoi Camp
261. Major R.Khullar, 4th Rajputana Rifles
262. Major R. D. Singh, Dogra Regiment, Army, Camp Chitarnar, Bandipora District
263. Major R. P. Singh, Dogra Regiment, Army, Camp Chitarnar, Bandipora District
264. Major R.S. Athreye / R.S.Athar Anand, 24 Rashtriya Rifles [RR], Army, Camp Magam
265. Major Raghwan R. Singh, 5 Kumaon Regiment, Army, Camp Nagam
266. Major Rajesh, 10 Rashtriya Rifles [RR], Army
267. Major Rajinder Singh [Operational name: Major Rajiv], 22 Rashtriya Rifles [RR], Army, Camp Bomai, Sopore, Baramulla District
268. Major Raju, 9 Dogra, Lettar Camp
269. Major Rakesh, 46 Rashtriya Rifles [RR], Army, Posted at M.E.S. Inspection Bungalow
270. Major Rampal [Code Name], 22 Rashtriya Rifles [RR], Hamray army Camp
271. Major Ranjan Mahahan, 5th Sikh Light Infantry [Sikh LI], Army
272. Major Ravi Dewan, 2 Rashtriya Rifles [RR], Wuderhen Camp
273. Major Ravi, 44 Rashtriya Rifles [RR], Veterinary Camp stationed near Shopian Police Station
274. Major Rawat [Operational name: Rasheed Khan], 52 Rashtriya Rifles [RR], Army, Camp Choor, Potukhah
275. Major S. A. Bakali [reportedly dead], 12 Maratha Light Infantry [MLI], Army, Camp Mirgund, Kuligam, Lolab, Kupwara District
276. Major S. Bhattacharya, 42 Rashtriya Rifles [RR], Army, Camp Kralpora
277. Major S. Bhattacharya, Company Commander, 28 Rashtriya Rifles [RR], Tragpora camp, Army
278. Major S. Sehgal, Adjutant, In-charge of Camp, 5 Rashtriya Rifles [RR], Army, Camp Doderhama, Ganderbal
279. Major S.S. Grewal, Adjutant, 34 Rashtriya Rifles [RR], Army, Camp Beerwah
280. Major S.S. Sinha [Operational name: Liyakat Ali Khan], 8 Rajputana Rifles, Army, Camp Palhallan, Pattan, Baramulla District
281. Major Samir Singh [Operational name: Major Malik], 8 Rajputana Rifles, Army, Camp Kreeri
282. Major Samlok Dass, 23 Rashtriya Rifles [RR], Army, Camp Ukhral Tehsil, Pogal, Banihal
283. Major Sanjay Ahuja, Officer-in-Command, 15 Punjab Regiment
284. Major Sehgal, 15th Punjab Regiment
285. Major Sharma, 9th Rajputana Rifles, Army, Camp Choolan
286. Major Shetty, 24 Rashtriya Rifles [RR], Army, Camped at ITI Handwara
287. Major Sourabh Sharma, 7 Rashtriya Rifles [RR], Camped at Khundroo
288. Major Srivastava, 119th Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soiteng
289. Major Sumit Rastogi, 42 Rashtriya Rifles [RR], Army, Camp Newgoali
290. Major Sunil Jadhv, 3 Rashtriya Rifles [RR], Army
291. Major Thapa, 3rd Sikh Regiment, Army, Camp Boniyar
292. Major Upinder, 4 Rajput Regiment, Army
293. Major Ved Prakash Yadav, 2/8 Gorkha Rifles, Army, Camp Chogul, Handwara, Kupwara District
294. Major Vijay Chahar, 18 Rashtriya Rifles [RR], Army
295. Major Vikash Lakhera, 19 Rashtriya Rifles [RR], Army, Badami Bagh Cantonment, Srinagar
296. Major Vikram, 2 Rashtriya Rifles [RR], Army, Camp Zainakote
- 297.** Major Vishal Sharma, 18 Grenadiers, Army, Chak Hajin Camp
298. Major Vishu Jeet Singh / Major Vishwajeet Singh, 20 Grenadiers, Army, Camp Boatman Colony, Bemina, Srinagar
299. Major Y. Mohan Yadav, 13 Rashtriya Rifles [RR] / 3 Kumaon Regiment, Army
- 300.** Major Yadav Prashad, 197th Battalion, Army, Camp Zakoora/ Ganderbal
301. Major Yadav Singh alias Aman, 28 Rashtriya Rifles [RR], Army, Camp Salkote
302. Major Yousuf Khan [operational name], 2 Rashtriya Rifles [RR], Wuderhen Camp
303. Major, "Dhandan", Palhallan army camp
304. Major, Dalal, 29 Rashtriya Rifles [RR], Wusan Camp
305. Major, Deepak, 29 Rashtriya Rifles [RR], Shumlaran camp
306. Major, KV Singh, 29 Rashtriya Rifles [RR], Jetty Camp
307. Major, Rakesh, Army, Watergam Camp
308. Major, Suman, 14 Rashtriya Rifles [RR], Chiternaar Camp
309. Major, Verma, Wusan army camp
310. Major, Vikas Verma, 22 Rashtriya Rifles [RR], Bathoo Choor Camp
311. Mangey Ram, 35 Rashtriya Rifles [RR], Nagam Camp
312. Mohammad Sharif, son of Atta Mohammad, resident of Sathra, Mandi, 8th Battalion Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Saklot Block, Mandi
313. Morpal Singh, Gdr, 29 Rashtriya Rifles [RR],

- Army
314. Muneer Hussain, son of Atta Mohammad, resident of Jandrola, Mandi, 8th Battalion Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Saklot Block, Mandi
 315. Muneer Hussain, son of Habib, resident of Jandrola, 8th Battalion Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Saklot Block, Mandi
 316. Naib Subedar Dalu Ram, 5 Rajputana Rifles, Army
 317. Naib Subedar Hakikat Rai C, 4th Rajputana Rifles
 318. Naib Subedar Laxman Singh, 3 Grenadiers, Army, Camp Zurhama
 319. Naib Subedar Mool Chand Punia HQ, 4th Rajputana Rifles
 320. Naib Subedar Nazahar Mohammad, 20 Grenadiers, Army, Camp Boatman Colony, Bemina, Srinagar
 321. Naib Subedar Pep Singh A, 4th Rajputana Rifles
 322. Naib Subedar Sukhi Ram B, 4th Rajputana Rifles
 323. Naib Subedar Tej Pal Singh A, 4th Rajputana Rifles
 324. Naib Subedar, Nazahar Mohammad, 20 Grenadiers, Army, Camp Boatman Colony, Bemina, Srinagar
 325. Naib Subedar, Subhash Chander, 22 Grenadiers, Watergam Camp, Kreeri
 326. Naik [Corporal] A.A. Parma, 19 Maratha Light Infantry [MLI], Army
 327. Naik [Corporal] Ajit Singh C, 4th Rajputana Rifles
 328. Naik [Corporal] Bahadur Singh Tanwar, 29 Rashtriya Rifles [RR], Army
 329. Naik [Corporal] Balbir Singh, 7 Para, Rashtriya Rifles [RR], Army
 330. Naik [Corporal] Bhura Ram B, 4th Rajputana Rifles
 331. Naik [Corporal] Bijender Singh C, 4th Rajputana Rifles
 332. Naik [Corporal] Birpal Singh C, 4th Rajputana Rifles
 333. Naik [Corporal] Chandan Singh B, 4th Rajputana Rifles
 334. Naik [Corporal] Chandgi Ram C, 4th Rajputana Rifles
 335. Naik [Corporal] Chhabil Dass A, 4th Rajputana Rifles
 336. Naik [Corporal] Daya Chand HQ, 4th Rajputana Rifles
 337. Naik [Corporal] Dhan Prasad Gurung, 2/8 Grenadiers
 338. Naik [Corporal] Dinesh Singh Rana, 20 Rashtriya Rifles [RR], Army, Kerewa
 339. Naik [Corporal] Ghanshyam Singh HQ, 4th Rajputana Rifles
 340. Naik [Corporal] Hanumana Ram B, 4th Rajputana Rifles
 341. Naik [Corporal] Harbhajan Singh, 1 Rashtriya Rifles [RR], Army, Camp Roads and Building Quarter, Qazigund
 342. Naik [Corporal] Hari Singh B, 4th Rajputana Rifles
 343. Naik [Corporal] Indal Singh A, 4th Rajputana Rifles
 344. Naik [Corporal] Inderjeet Singh D, 4th Rajputana Rifles
 345. Naik [Corporal] Karambir Singh B, 4th Rajputana Rifles
 346. Naik [Corporal] Mahabir Singh HQ, 4th Rajputana Rifles
 347. Naik [Corporal] Manoj Singh, 23 Rashtriya Rifles [RR], Army, Camp Ukhral Tehsil, Pogal, Banihal
 348. Naik [Corporal] Narayan Singh D, 4th Rajputana Rifles
 349. Naik [Corporal] Narender Singh, 29 Rashtriya Rifles [RR], Army
 350. Naik [Corporal] Rajender Singh B, 4th Rajputana Rifles
 351. Naik [Corporal] Rajender Singh C, 4th Rajputana Rifles
 352. Naik [Corporal] Rajender Singh D, 4th Rajputana Rifles
 353. Naik [Corporal] Ramesh Chander B, 4th Rajputana Rifles
 354. Naik [Corporal] Ramesh Singh HQ, 4th Rajputana Rifles
 355. Naik [Corporal] Rameshwar Singh HQ, 4th Rajputana Rifles
 356. Naik [Corporal] Ran Singh B, 4th Rajputana Rifles
 357. Naik [Corporal] Satbir Singh B, 4th Rajputana Rifles
 358. Naik [Corporal] Soni Singh D, 4th Rajputana Rifles
 359. Naik [Corporal] Subhash Chander HQ, 4th Rajputana Rifles
 360. Naik [Corporal] Sumer Singh A, 4th Rajputana Rifles
 361. Naik [Corporal] Tara Datt G/C, Army, Badami Bagh Cantonment Area
 362. Narender Singh D, 4th Rajputana Rifles
 363. Officer [Sikh], 2 Grenadiers, Army, Camp Malasia, Batamaloo [as of 20 January 1995]
 364. Officer [two stars], 2 Jat, Dori Camp [as in November 2002]
 365. Officer Kalwat, 3 Rashtriya Rifles [RR], Waghama Camp
 366. Officer Malik, Indian army, Palhallan Camp
 367. Officer Pillay, Corps of Military Police [CMP], Badami Bagh Cantonment, Srinagar
 368. Officer R.S. Kataria, Indian army probably a Lt. Colonel], Khanabal camp
 369. Officer Rana, Intelligence
 370. Officer Suresh Kumar, Tapper Camp, Pattan
 371. Officer, "Dadu" [Nickname], Kanari Camp, 4 Sikh Light Infantry
 372. R. S. Raina, 22 Rashtriya Rifles [RR], Machil Army Camp
 373. Ramesh Kumar, Gdr, 29 Rashtriya Rifles [RR], Army
 374. Rifleman Abbas Hussain Shah, 161st

- Battalion Territorial Army
375. Rifleman Ajmer Singh C, 4th Rajputana Rifles
 376. Rifleman Amir Singh D, 4th Rajputana Rifles
 377. Rifleman Ashok Kumar D, 4th Rajputana Rifles
 378. Rifleman Azad Singh B, 4th Rajputana Rifles
 379. Rifleman Bhawani Singh HQ, 4th Rajputana Rifles
 380. Rifleman Bhik Chand A, 4th Rajputana Rifles
 381. Rifleman Bijender Singh C, 4th Rajputana Rifles
 382. Rifleman Deep Bahadur, 33 Rashtriya Rifles [RR], Army, Camp Doodhipora, Tikri
 383. Rifleman Denash Kumar D, 4th Rajputana Rifles
 384. Rifleman Devender Nath Singh D, 4th Rajputana Rifles
 385. Rifleman Dhiraj Bharti, 33 Rashtriya Rifles [RR], Army, Camp Doodhipora, Tikri
 386. Rifleman Gayan Singh D, 4th Rajputana Rifles
 387. Rifleman Gurtej Singh / Ct. Gurmeet Singh, 1 Rashtriya Rifles [RR], Army, Camp Roads and Building Quarter, Qazigund
 388. Rifleman Gyan Singh A, 4th Rajputana Rifles
 389. Rifleman Harnam Singh D, 4th Rajputana Rifles
 390. Rifleman Jagdish Prasad B, 4th Rajputana Rifles
 391. Rifleman Kok Singh A, 4th Rajputana Rifles
 392. Rifleman Mahesh Singh D, 4th Rajputana Rifles
 393. Rifleman Mangu Singh D, 4th Rajputana Rifles
 394. Rifleman Mukesh Singh, 36 Rashtriya Rifles [RR], Garhwal Rifles, Camp Larkipora, Islamabad
 395. Rifleman Parsha Ram C, 4th Rajputana Rifles
 396. Rifleman Rajbir Singh C, 4th Rajputana Rifles
 397. Rifleman Rajender Singh B, 4th Rajputana Rifles
 398. Rifleman Rajender Singh C, 4th Rajputana Rifles
 399. Rifleman Rambir Singh D, 4th Rajputana Rifles
 400. Rifleman Rambir Singh D, 4th Rajputana Rifles
 401. Rifleman Rathoswa Singh D, 4th Rajputana Rifles
 402. Rifleman Satyawani Singh C, 4th Rajputana Rifles
 403. Rifleman Shiv Narayan A, 4th Rajputana Rifles
 404. Rifleman Shiv Sagar, 29 Rashtriya Rifles [RR], Jetty Camp
 405. Rifleman Sumer Singh C, 4th Rajputana Rifles
 406. Rifleman Sunder Singh HQ, 4th Rajputana Rifles
 407. Rifleman Surender Singh D, 4th Rajputana Rifles
 408. Rifleman Sushil Kumar D, 4th Rajputana Rifles
 409. Rifleman Tulishi Ram HQ, 4th Rajputana Rifles
 410. Rifleman Vedpal Singh D, 4th Rajputana Rifles
 411. Rifleman Vijay Singh D, 4th Rajputana Rifles
 412. Rifleman Vinod Kumar C, 4th Rajputana Rifles
 413. Rifleman Vishwas Singh HQ, 4th Rajputana Rifles
 414. Rishi Pal Singh, Gdr, 29 Rashtriya Rifles [RR], Army
 415. S.M.Romesh Chand, 8th Battalion Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Saklot Block, Mandi
 416. Sanjay Kumar, Army, Badami Bagh Cantonment
 417. Satish Kumar, Gdr, 29 Rashtriya Rifles [RR], Army
 418. Sepoy Amar Singh, 22 Rashtriya Rifles [RR], Army, Camp Bomai [referred to as Rajinder post camp]
 419. Sepoy Ashok Choudary, 119th Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soitang
 420. Sepoy Bijoy Sinha, 119th Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soitang
 421. Sepoy Chandra Bhan, 4 Rajput Regiment, Army
 422. Sepoy David Lalthanmawia, 119th Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soitang
 423. Sepoy Harvinder Singh, 22 Rashtriya Rifles [RR], Army, Camp Bomai [referred to as Rajinder post camp]
 424. Sepoy Kamilesh, 22 Rashtriya Rifles [RR], Army, Camp Bomai [referred to as Rajinder Post camp]
 425. Sepoy Master Veer, NCA 7th JAT Regiment, Army
 426. Sepoy Mohinder Singh, 23 Rashtriya Rifles [RR], Army, Camp Ukhral Tehsil, Pogal, Banihal
 427. Sepoy Nagendra Singh, Rajput Regiment, Army
 428. Sepoy Narendra Singh, Rajput Regiment, Army
 429. Sepoy Pritam, 22 Rashtriya Rifles [RR], Army, Camp Bomai [referred to as Rajinder post camp]
 430. Sepoy Rajinder Kumar, NCA 7th JAT Regiment, Army
 431. Sepoy Ram "Bloose" Paswan, 159th Field Regiment
 432. Sepoy S.U. Borbhuiya, 119th Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soitang
 433. Sepoy Sandeep Singh, 23 Rashtriya Rifles [RR], Army, Camp Ukhral Tehsil, Pogal, Banihal
 434. Sepoy Surinder Singh, 31 Counter Intelligence Unit [CIU], Army
 435. Sepoy Vinod Kumar, 1 Rashtriya Rifles [RR], Army
 436. Sepoy Vinod Kumar, 5 Rashtriya Rifles [RR], Army, Camp Doderhama, Ganderbal
 437. Sepoy Zakir Hussain, 119th Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soitang
 438. Subedar Balraj, 8th Battalion Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Saklot Block, Mandi [as of October 2000]
 439. Subedar Balraj, 8th Battalion, Jammu and Kashmir Light Infantry [JAKLI], Army, Camp

- Shahpur, Haveli, Poonch [as of 2009]
440. Subedar Birkha Raj, 33 Rashtriya Rifles [RR], Army, Camp Doodhipora, Tikri
 441. Subedar Charan Dass Singh, 17 Jammu and Kashmir Light Infantry Rifles [JAKLI], Army
 442. Subedar Daya Ram B, 4th Rajputana Rifles
 443. Subedar Daya Ram C, 4th Rajputana Rifles
 444. Subedar Gurmail Singh, 4th Sikh Regiment, Army
 445. Subedar Gurnam Singh [Operational name: Tiger], 15th Punjab Regiment, Army, Baramulla Camp
 446. Subedar Harindran / Harvinder Singh, 28 Madras Army / 28 Rashtriya Rifles [RR], Army
 447. Subedar Idrees Khan, 7 Rashtriya Rifles [RR], Camped at Khundroo
 448. Subedar Kalayan Singh, 17 Rashtriya Rifles [RR], Army
 449. Subedar Kuldeep Singh, 20 Rashtriya Rifles [RR], Army, Kerewa
 450. Subedar Laxman Singh D, 4th Rajputana Rifles
 451. Subedar Major Harbans Singh, 20th Punjab Infantry, Army
 452. Subedar Mohan Singh, Palhallan army camp
 453. Subedar Paandurung, 17 Rashtriya Rifles [RR], Army
 454. Subedar Ram Chander Singh D, 4th Rajputana Rifles
 455. Subedar Rampaul, 23 Rashtriya Rifles [RR], Army, Camp Ukhral Tehsil, Pogal, Banihal
 456. Subedar Rattan Singh, Junior Commissioner Officer [JCO], 2 Rashtriya Rifles [2 RR]
 457. Subedar Satbir Singh, 4 Rajput Regiment, Army
 458. Subedar Surinder Sinha, 119th Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soitang
 459. Subedar Surjeet Singh, Company Havaladar Major [CHM] 1 Rashtriya Rifles [RR] / 3rd Sikh Battalion, Army
 460. Subedar U.S. Thappa, 31 Counter Intelligence Unit [CIU], Army
 461. Sujan Singh, 2 Rashtriya Rifles [RR]
 462. SWR Ram Singh, 33 Rashtriya Rifles [RR], Army, Camp Doodhipora, Tikri
 463. Usman Ali, Gdr, 29 Rashtriya Rifles [RR], Army
 464. V. K. Mishra, MT Unit, Army

II. PARAMILITARY [161]

A. Border Security Force [BSF] [102]

465. ADG, K.K. Verma, Additional Director General of Border Security Force [BSF] and In-charge Fair View Guest House / Papa-II Interrogation Centre] Srinagar
466. Assistant Commandant Ashok Yadav, 94th Battalion, Border Security Force [BSF]
467. Assistant Commandant Balwant Bhaskar

- Joshi, 94th Battalion, Border Security Force [BSF]
468. Assistant Commandant J. N. Singh, 163rd Battalion Border Security Forces [BSF], Camp Kant Bagh, Baramulla District
469. Assistant Commandant Kaanjoo Singh, 193rd Battalion Border Security Force [BSF]
470. Assistant Commandant Kartar Singh Saroha, 94th Battalion, Border Security Force [BSF]
471. Assistant Commandant MN Sajjan, 94th Battalion, Border Security Force [BSF]
472. Assistant Commandant Mohinder Singh, 33rd Battalion Border Security Force [BSF], Camp Madder
473. Assistant Commandant Prakash Singh, 94th Battalion, Border Security Force [BSF]
474. Assistant Commandant Surinder Singh, 104th Battalion Border Security Force [BSF], Camp Iqbalabad
475. Assistant Commandant, Jai Singh, [Operational name: Jameel Khan], Company Commander, 151st Battalion Border Security Force [BSF], Camp Tral
476. Birendra Kumar Jha, 108th Battalion Border Security Force [BSF] [presently 11th Battalion BSF]
477. Commandant [as of June 2000], 127 Battalion, Border Security Force [BSF], Sanat Nagar
478. Commandant Dinesh Kotwal, 41st Battalion, Border Security Force [BSF], Camp Karan Nagar
479. Commandant Gopal Singh Shekawat, 4th Battalion, Border Security Force [BSF]
480. Commandant K.C. Sharma, 75th Battalion Border Security Force [BSF]
481. Commandant Randeer Kumar Birdi, 68th Battalion Border Security Force [BSF]
482. Commandant S. Thangappan, 94th Battalion, Border Security Force [BSF]
483. Commandant Sethi, 69th Battalion Border Security Force [BSF]
484. Commandant Sharma, 24th Battalion Border Security Force [BSF], Camp Wodoora, Sopore
485. Commandant Subhash Chandra Sharma [Operational name: Peter], 7th Battalion Border Security Force [BSF]
486. Commandant Yadav, 12th Battalion Border Security Force [BSF]
487. Commandant, 9th Battalion Border Security Force [BSF], Camped at Mamta Hotel [as of February 1997]
488. Company Commander, Gurnam Singh, BSF, Bonura Camp, Pulwama district
489. Constable Bhoop Singh, 74th Battalion Border Security Force [BSF]
490. Constable Gorakhnath Gwali, 88th Battalion, Border Security Force [BSF], Camp Iqbal Market, Sopore, Baramulla District
491. Constable H. B. Jayrama, 74th Battalion Border Security Force [BSF]

492. Constable H. B. Jayrama, 74th Battalion Border Security Force [BSF]
493. Constable Harish Chand Panday, 4th Battalion, Border Security Force [BSF]
494. Constable Jai Prakash, 60th Battalion Border Security Force [BSF]
495. Constable Kulwant Singh, 74th Battalion Border Security Force [BSF]
496. Constable Labhour Singh, 107th Battalion, Border Security Force [BSF], Camp Hawal
497. Constable Lakhwinder Kumar, 68th Battalion Border Security Force [BSF]
498. Constable M.S.Rawat, 4th Battalion, Border Security Force [BSF]
499. Constable Madan Lal, 4th Battalion Border Security Force [BSF]
500. Constable Mukesh Kumar, 4th Battalion, Border Security Force [BSF]
501. Constable PK Sataj [Also referred to as "AK Soha" in documents], 132 Battalion HQ Border Security Force [BSF], Singhpora
502. Constable Prem Singh, 74th Battalion Border Security Force [BSF]
503. Constable R.C. Marmoo, 58th Battalion Border Security Force [BSF], Camp Dahwauth, Pahalgam
504. Constable Ram Naresh, E Company, 124th Battalion / attached to the 173rd Battalion, Border Security Force [BSF], Camp BatagundDambal, Tral
505. Constable Ravi Kumar, 74th Battalion Border Security Force [BSF]
506. Constable Satisan T.R., 74th Battalion Border Security Force [BSF]
507. Constable Shiv Murtiappa, 74th Battalion Border Security Force [BSF]
508. Constable Uttam Singh, 75th Battalion BSF
509. Constable Kalyan Singh, 4th Battalion, Border Security Force [BSF]
510. Deputy Commandant D.S. Rathore, 30th Battalion Border Security Force [BSF]
511. Deputy Commandant J. K. Rodala, 74th Battalion Border Security Force [BSF]
512. Deputy Commandant Jaideo Singh, 94th Battalion, Border Security Force [BSF]
513. Deputy Commandant M. C. Halder, 163rd Battalion Border Security Forces [BSF], Camp Kant Bagh, Baramulla District
514. Deputy Commandant Rowhat, 75th Battalion Border Security Force [BSF]
515. Deputy Commandant Sanyal Singh, 4th Battalion, Border Security Force [BSF]
516. Deputy Commandant Sardar Rai Singh, 41st Battalion Border Security Force [BSF], Camp Karan Naga
517. Deputy Commandant-Chawan, 102nd Battalion, Border Security Force [BSF]
518. Deputy Commandant-Chuhan, 141st Battalion Border Security Force [BSF], Camp Batamaloo bus stand
519. Deputy Commandant, RP Bhukal, 75th Battalion BSF
520. Deputy Commandment, Arvinder Singh, Border Security Force [BSF]
521. DIG A.K. Malik, Deputy Inspector General, 194th Battalion Border Security Force [BSF]
522. DIG JK Sharma, Deputy Inspector General, 75th Battalion BSF
523. DIG RS Jasrotia, Deputy Inspector General, Border Security Force [BSF], Sector Baramulla,
524. Guard Commander N.K. Raina, 107th Battalion, Border Security Force [BSF], Camp Hawal
525. HavaladarKasturiLal, 33rd Battalion Border Security Force [BSF], Camp Madder
526. Havaladar Krishnan Kumar, 58th Battalion Border Security Force [BSF], Camp Dahwauth, Pahalgam
527. HavaladarNathula, 58th Battalion Border Security Force [BSF], Camp Dahwauth, Pahalgam
528. Head ConstableGajjan Singh, 75th Battalion BSF
529. Head Constable Kartar Chand Raina, 30th Battalion Border Security Force [BSF]
530. Head Constable Ramesh Lal, 140th Battalion Border Security Force [BSF]
531. Head Constable ShoniLal, 30th Battalion Border Security Force [BSF]
532. Head Constable Surinder Singh [Also referred to as "Mohinder Singh" in documents], 132 Battalion HQ Border Security Force [BSF], Singhpora
533. Inspector Ajaib Singh, 94th Battalion, Border Security Force [BSF]
534. Inspector Ajay Singh, 4th Battalion, Border Security Force [BSF]
535. Inspector B.D. Gupta, 66th Battalion Border Security Force [BSF], Camped at Trehgam
536. Inspector B.D.Verma, 4th Battalion, Border Security Force [BSF]
537. Inspector BS Rawat, Platoon Commander, 94th Battalion, Border Security Force [BSF]
538. Inspector Gurcharan Singh, 94th Battalion, Border Security Force [BSF]
539. Inspector J.S.Bhan, 141st Battalion Border Security Force [BSF]
540. Inspector Jain, 69th Battalion Border Security Force [BSF]
541. Inspector K.K.Verma, Border Security Force [BSF] Headquarters, Srinagar
542. Inspector Manjit Singh, 124th Battalion Border Security Force [BSF], D Company, Tral, Pulwama
543. Inspector PremNathDogra, 102nd Battalion, Border Security Force [BSF]
544. Inspector RaasBehariDutta, Duty Sectional Officer, Fair View Guest House / Papa-II Interrogation Centre, Border Security Force [BSF], Srinagar
545. Inspector Rajesh Kumar, [Also referred to as being "Sub-Inspector" in documents], 132 Battalion HQ Border Security Force [BSF], Singhpora
546. Inspector Ram Saran Singh, 94th Battalion,

- Border Security Force [BSF]
547. Inspector Rattan Singh, 127 Battalion, Border Security Force [BSF], Sanat Nagar Camp
 548. Kuldeep Singh, 69th Battalion Border Security Force [BSF], Camp Naydyar
 549. Lance Naik [Lance Corporal] K.P.Gopa, 141st Battalion Border Security Force [BSF]
 550. Lance Naik [Lance Corporal], K. Singh, 74th Battalion Border Security Force [BSF]
 551. Naik [Corporal] Khairul Hussain, 74th Battalion Border Security Force [BSF]
 552. Naik [Corporal] Nand Kishore, 74th Battalion Border Security Force [BSF]
 553. Officer Sharma, 132 Battalion HQ Border Security Force [BSF], Singhpura
 554. Officer, Liason Agency, 82nd Battalion Border Security Force [BSF], Surankote [as of 2006]
 555. Officer, Sharma, Border Security Force [BSF], Hajin Camp
 556. R. S. Khoswa, Head, General Staff, 41st Battalion Border Security Force [BSF], Camp Karan Nagar
 557. Sanjay Sharma, 141st Battalion Border Security Force [BSF]
 558. SI Ajmer Singh, Sub-Inspector, 60th Battalion Border Security Force [BSF], Nallamar road
 559. SI Alawat, Sub-Inspector, BSF, Headquarters, Bonura Camp, Pulwama district
 560. SI B.I. Singh or B. K. Singh [reportedly deceased], Sub-Inspector, 107th Battalion, Border Security Force [BSF]
 561. SI Bawani Singh / Bhagwan Singh, Sub-Inspector, 124th Battalion Border Security Force [BSF], Camp Batagund Dambal, Tral
 562. SI Hanuman Singh, Sub-Inspector, 66th Battalion Border Security Force [BSF], Camped at Trehgam
 563. SI Malhar Singh, Sub-Inspector, 74th Battalion Border Security Force [BSF]
 564. SI Toran Biswas, Sub-Inspector, 141st Battalion Border Security Force [BSF]
 565. SI Vinod Kumar, Sub-Inspector, 30th Battalion Border Security Force [BSF], Camp near Neelam Cinema, Srinagar
 566. Vinod Kumar, Border Security Force [BSF]
- B. Central Reserve Police Force [CRPF] [39]**
567. Assistant Commandant Pandey, 46th Battalion Central Reserve Police Force [CRPF]
 568. Assistant Commandant S.P. Chaturvedi, 181st Battalion Central Reserve Police Force [CRPF], Camp Khaigam
 569. Assistant Commandant, BrijBhushan, 120th Battalion Central Reserve Police Force [CRPF]
 570. Assistant Sub-Inspector [ASI] Ram Chandre [Operational name: Chaha], 50th Battalion, Central Reserve Police Force [CRPF], Camp Jagger and Fruit Mandi Headquarters, Sopore, Baramulla District
 571. ChamanMosi, Central Reserve Police Force [CRPF], SICOP Camp
 572. Commandant Kripal Singh, 50th Battalion, Central Reserve Police Force [CRPF], Camp Jagger and Fruit Mandi Headquarters, Sopore, Baramulla District
 573. Commandant, 46th Battalion Central Reserve Police Force [CRPF], Camped at the Matches Factory, Baramulla [as of August 1990]
 574. Constable Abhilagh Singh, 181st Battalion Central Reserve Police Force [CRPF], Camp Khaigam
 575. Constable Anil Ramachari, 179th Battalion, Central Reserve Police Force [CRPF], Camp Chinkipora
 576. Constable G. Ram NaikLal, 2nd Battalion Central Reserve Police Force [CRPF], D Company
 577. Constable Gabbar Singh, 50th Battalion, Central Reserve Police Force [CRPF], Camp Jagger and Fruit Mandi Headquarters, Sopore, Baramulla District
 578. Constable P.C. Hundique, Central Reserve Police Force [CRPF]
 579. Constable S.T.Kurian, Central Reserve Police Force [CRPF]
 580. Constable S.V. Limbekar [Operational name: Venkati], Central Reserve Police Force [CRPF]
 581. Constable SamiullahPandit, 181st Battalion Central Reserve Police Force [CRPF], Camp Khaigam
 582. Constable Shyam Kumar, Central Reserve Police Force [CRPF]
 583. Deputy Commandant B.R. Singh, 120th Battalion Central Reserve Police Force [CRPF]
 584. Deputy Commandant Umair Singh, 181st Battalion, Central Reserve Police Force [CRPF], Trajbal Camp
 585. Deputy Commandant, 78th Battalion Central Reserve Police Force [CRPF] [as in December 2008]
 586. DIG Jaswant Singh, Deputy Inspector General, Central Reserve Police Force [CRPF]
 587. DSP Manmohan Sharma, Deputy Superintendent of Police [Operational name: Moni Singh], 50th Battalion, Central Reserve Police Force [CRPF], Camp Jagger and Fruit Mandi Headquarters, Sopore, Baramulla District
 588. DSP Pandey, Deputy Superintendent of Police, 60th Battalion, Central Reserve Police Force [CRPF]
 589. DSP, Lakha Singh, Deputy Superintendent of Police, 50th Battalion, Central Reserve Police Force [CRPF], Camp Jagger and Fruit Mandi Headquarters, Sopore, Baramulla District
 590. DSP, Neigi [also referred to as "Nagee" or "Naygi"], Deputy Superintendent of Police, 50th Battalion Central Reserve Police Force

- [CRPF], Camped at Onagam, Bandipora
591. Head Constable IsherDass, 120th Battalion Central Reserve Police Force [CRPF]
 592. Head Constable Raghbir Singh, 120th Battalion Central Reserve Police Force [CRPF]
 593. Inspector SudershanSood [also referred to as Sudershan Kumar], 90th Battalion, Central Reserve Police Force [CRPF]
 594. Kripal Singh, 50th Battalion, Central Reserve Police Force [CRPF], Camp Zangam, Pattan
 595. Lance Naik [Lance Corporal] A.A. Khan, Central Reserve Police Force [CRPF]
 596. Lance Naik [Lance Corporal] Kuldeep Singh, 120th Battalion Central Reserve Police Force [CRPF]
 597. Manzoor Bhat, 181st Battalion Central Reserve Police Force [CRPF], Camp Khaigam
 598. Officer, Raju, Central Reserve Police Force [CRPF], SICOP Camp
 599. Officer, Sharma, Central Reserve Police Force [CRPF], SICOP Camp
 600. SI Badloo Ram, Sub-Inspector, 179th Battalion Central Reserve Police Force [CRPF]
 601. SI Bhagwan Das, Sub-Inspector, 120th Battalion Central Reserve Police Force [CRPF]
 602. SI Devi Dutt, Sub-Inspector, 53rd Battalion Central Reserve Police Force [CRPF]
 603. SI Prem Singh, Sub-Inspector, Picket/Bunker in-charge, 60th Battalion, Central Reserve Police Force [CRPF]
 604. SI R.P. Roy, Sub-Inspector, Commander, Central Reserve Police Force [CRPF]
 605. SI Ujala Singh, Sub-Inspector, Post Commander, 181st Battalion, Central Reserve Police Force [CRPF], Trajbal Camp

C. Other [20]

606. 2 IC, R.S. Raina, 10th Battalion Indo-Tibetan Border Police [ITBP], Camp Verinag
607. Assistant Commander Dinesh Sharma, National Security Guards [NSG] [Subsequently promoted as Deputy Commander]
608. Assistant Commander S.C. Katoch, National Security Guards [NSG] [Subsequently promoted as Deputy Commander]
609. Constable Fareed Khan, 1st Battalion, Indian Reserve Police [IRP]
610. Deputy Commander S. N. Gupta, National Security Guards [NSG]
611. Doctor P.S. Gunjiyal, Medical officer [also spelt on occasion as “P.S. Gungial”, “Ganjal”], 10th Battalion Indo Tibetan Border Police [ITBP], Camp Verinag
612. Head Constable Ajit Kumar, 10th Battalion Indo Tibetan Border Police [ITBP], Camp Verinag
613. Head Constable Arun Kumar, 10th Battalion Indo-Tibetan Border Police [ITBP]
614. Head Constable Hukum Singh, 10th Battalion

- Indo Tibetan Border Police [ITBP], Camp Verinag
615. Head Constable Rajesh Kumar, 10th Battalion Indo-Tibetan Border Police [ITBP] [reportedly deceased]
616. IG Inder Singh Negi, Inspector General, 10th Battalion Indo-Tibetan Border Police [ITBP], Camp Verinag
617. Inspector Manchand Dogra, Intelligence Bureau, Ministry of Home Affairs [MHA], Chowkibal
618. Inspector Rajinder Singh [also spelt on occasion as “Ragender Singh”], 10th Battalion Indo Tibetan Border Police [ITBP], Camp Verinag
619. Inspector Suraj Singh / Surjit Singh [Operational name: Jagjit Singh], Intelligence Bureau [IB]
620. Officer Malik, Central Bureau of Investigation [CBI], Bijbehara, Islamabad district
621. Sub-Inspector [JCO] Mishra, 10th Battalion Indo Tibetan Border Police [ITBP], Camp Verinag
622. Sub-Inspector [JCO], R.S. Chauhan [also spelt on occasion as “R.S.Chowan”], 10th Battalion Indo Tibetan Border Police [ITBP], Camp Verinag
623. Sub-Inspector Pratap Singh, [reportedly dead], Sub-Inspector, 10th Battalion Indo Tibetan Border Police [ITBP], Camp Verinag
624. Sub-Inspector Ram Pratap, Sub-Inspector, 10th Battalion Indo Tibetan Border Police [ITBP], Camp Verinag
625. Sunil Joshi [INT Wing], 10th Battalion Indo Tibetan Border Police [ITBP], Camp Verinag

III. JAMMU AND KASHMIR POLICE [158]

626. “Chavhan” [Codename], Special Police Officer [SPO]
627. Abdul Ahad Sheikh [Operational name: Chottu], Special Operations Group [SOG], Sopore
628. ADGP S.M. Sahai, Additional Director General of Armed Police
629. Ajaz Khan, Special Operations Group [SOG]
630. ASI Abdul Khaliq, Assistant Sub-Inspector
631. ASI Ashok Kumar, Assistant Sub-Inspector, Special Operations Group [SOG]
632. ASI Bashir Ahmad, Assistant Sub-Inspector
633. ASI Farooq Ahmad Gudoo, Assistant Sub-Inspector, Special Operations Group [SOG]
634. ASI Irfan, Assistant Sub-Inspector
635. ASI Javaid Mattoo, Assistant Sub-Inspector, Special Operations Group [SOG]
636. ASI Mohammad Rafiq Chachoo, Assistant Sub-Inspector
637. ASI Mumtaz Hussain, Assistant Sub-Inspector
638. ASI Rashid, Assistant Sub-Inspector, Special Operations Group [SOG]
639. ASI Reyaz Punjabi, Assistant Superintendent

- of Police, Special Operations Group [SOG]
640. ASI Surjeet, Assistant Sub-Inspector of Police, Special Operations Group [SOG]
641. ASI Tariq, Duty Officer S.R.Gunj Police Station
642. ASP Shafkat Ali Watali, Additional Superintendent of Police
643. Bansi Lal, Personal Security Officer of DSP Bahadur Ram Kaith, Special Operations Group [SOG]
644. Bunt Singh, Special Operations Group [SOG]
645. Chotu [Nickname], Special Operations Group [SOG], Darzi Mohalla Camp, Islamabad
646. Constable Abdul Rashid Sofi, Ganderbal Police Station
647. Constable Abdul Rashid Trali [reportedly deceased], Special Operations Group [SOG]
648. Constable Ajaz-ud-Din Sheikh
649. Constable Bashir Ahmad, Pampore Police Station
650. Constable Ghulam Ahmed, No.1519/A
651. Constable Ghulam Nabi
652. Constable Gurmeet Singh, Special Operations Group [SOG]
653. Constable Haleem, Handwara Police Station
654. Constable Jarnail Singh, Special Operations Group [SOG], Magam
655. Constable Mohammad Ashraf
656. Constable Mohammad Rafiq
657. Constable Mohammad Razak
658. Constable Mohammad Yousaf, No.1845/A
659. Constable Mohammad Yousuf, resident of Sachan [Schichan], Anantnag
660. Constable Mushtaq Ahmad Lone
661. Constable Nissar Ahmed Lone, Saddar Police Station
662. Constable Parveena, Handwara Police Station [currently working in Criminal Investigations Department (CID)]
663. Constable Riyaz Ahmad, Pampore Police Station
664. Constable Sartaj Ahmed
665. Constable Tariq Ahmad Chadro [operational name: Mushtaq], Special Operations Group [SOG]
666. Constable Zakir Hussain Khan
667. DGP Kuldeep Khoda, Director General of Police [as of 31 May 2012 ex-Director General of Police [DGP], Jammu and Kashmir- Presently Chief Vigilance Commissioner]
668. DIG Anand Jain, Deputy Inspector General of Police, Srinagar
669. DIG Mushtaq Sadiq, Deputy Inspector General of Police
670. DSP Ashiq Hussain Tak, Deputy Superintendent of Police, Special Operations Group [SOG]
671. DSP Bahadur Ram Kaith, Deputy Superintendent of Police, Special Operations Group [SOG]
672. DSP Devinder Singh, Deputy Superintendent of Police
673. DSP Gagar Singh, Deputy Superintendent of Police- Operations, Special Operations Group [SOG]
674. DSP Ghansham Deputy Superintendent of Police, Special Operations Group [SOG]
675. DSP Kuldeep, Deputy Superintendent of Police, Special Operations Group [SOG]
676. DSP Mohan Singh, Deputy Superintendent of Police, Special Operations Group [SOG]
677. DSP Mukesh Bhatia, Deputy Superintendent of Police, Special Operations Group [SOG], Sopore
678. DSP Mukesh, Deputy Superintendent of Police, Special Operations Group [SOG], Islamabad
679. DSP Noor Mohammad, Deputy Superintendent of Police
680. DSP P.N. Shan Deputy Superintendent of Police, Special Operations Group [SOG], Surankote
681. DSP Rathore, Deputy Superintendent of Police, Operations, Special Operations Group [SOG]
682. DSP Sonallah Naik Deputy Superintendent of Police [then Station House Officer (SHO), Ramban Police Station]
683. DSP Tanvir Jeelani, Sub-Divisional Police Officer, Nowhatta Police Station
684. DSP Tejinder Singh, Deputy Superintendent of Police
685. Fareed, Jammu and Kashmir Police [reportedly killed]
686. Farooq Ahmad Padder, Source for Senior Superintendent of Police [SSP] Hans Raj Parihar
687. Gani, Special Police Officer [SPO] [deceased]
688. Gupta, Special Operations Group [SOG], Humhama Camp
689. Head Constable Ali Mohammed, Munshi in Panzalla Police Station
690. Head Constable Ghulam Nabi, Panzalla Police Station
691. Head Constable Ichpal Singh, Special Operations Group [SOG]
692. Head Constable Janak Raj
693. Head Constable Krishan Kumar, Special Operations Group [SOG]
694. Head Constable Maqsood Ahmad Khan, Surankote Police Station
695. Head Constable Mohammad Akbar, Surankote Police Station
696. Head Constable Mohammed Shafi, Panzalla Police Station
697. Head Constable Ratan Chand, Jammu and Kashmir Armed Police [JKAP]
698. IGP Farooq Khan, Inspector General of Police
699. IGP JP Singh, Inspector General of Police
700. In-charge, Special Operations Group [SOG], Magam, Beerwah, Budgam District, Camped outside the Beerwah Police Station [as of

June 2002]

701. Inspector Abdul Majeed Malik, Station House Officer [SHO], Soura Police Station
702. Inspector Khursheed Ahmed Wani, Special Operations Group [SOG], Camp Cargo, Shergari
703. Inspector Mukesh Kumar
704. Inspector Narendra Singh Peshar, Jammu and Kashmir Armed Police [JKAP]
705. Inspector Pritam Singh, In-charge of Special Operations Group [SOG], Camp Lethpora
706. Inspector Showkat Ahmad Mir, Vigilance Department
707. Inspector Waris Shah, In-Charge, Special Operations Group [SOG], Camp Pakharpora
708. Investigating Officer, Gyan Singh, of Rajouri Police Station
709. Kaka Battaa, Special Operations Group [SOG]
710. Mansoor Ahmad, Munshi at Pampore Police Station
711. Manzoor Ahmad Malik, Special Operations Group [SOG], Sumbal Camp
712. Manzoor Ahmad, Special Police Officer [SPO]
713. Mohammad Akram, Special Police Officer [SPO]
714. Mohammad Ashraf Malik Special Police Officer [SPO]
715. Mohammad Ashraf, Special Police Officer [SPO] and Village Defence Committee [VDC] head
716. Mohammad Rafiq Gujjar [Operational name: Pathan], Surankote, Special Police Officer [SPO], Police line Poonch
717. Mohammad Rafiq, Special Police Officer [SPO]
718. Mohammad Shafi, Special Operations Group [SOG], Gungbaug
- 719.** Mohammad Shafi, Special Operations Group [SOG], Sopore
720. Mohammad Younis [Operational name: Tiger], Special Police Officer [SPO], Surankote Police Station
721. Mohammad Younis, Special Operations Group [SOG], Gungbaug
722. Mohammed Yousuf, Special Operations Group [SOG]
723. Munawar Singh, Special Operations Group [SOG], Humhama Camp, Budgam District
724. Muzamil, Special Operations Group [SOG], Darzi Mohalla Camp, Islamabad
725. Nazir Ahmad, Driver
726. Officer R.P Singh, Special Operations Group [SOG], Harwan
727. PP Singh, Special Operations Group [SOG]
728. Rajendra, Special Operations Group [SOG], Palhallan camp
729. Ram Das, Special Operations Group [SOG]
730. Rani Khalida, Special Operations Group [SOG]
731. Sabzar Ahmad, Qamarwari Police Post
732. Sanjay Kumar [Operational name: Mohammad Saleem], Special Police Officer [SPO]
733. Selection Grade Constable Chaman Lal, Special Operations Group [SOG]
734. Selection Grade Constable Gansham, Special Operations Group [SOG], Camp Lethpora
735. Selection Grade Constable Mohammad Abass Palla
736. Selection Grade Constable Mohammad Shafi Mufti
737. Selection Grade Constable Nissar Ahmad
738. Selection Grade Constable Nissar Ahmad Malik
739. Shailender Singh [Operational name: Razaq], Special Police Officer [SPO]
740. SHO Qamar-ud-Din, Station House Officer, Kupwara Police Station, Special Operations Group [SOG], Gungbaug
741. SHO Rouf, Station House Officer, Mattan Police Station
742. SHO S. M. Jingral [also referred to as S.M. Jindral or Gindral on occasion], Station House Officer, Pampore Police Station
743. SHO Shabir, Station House Officer, Special Operations Group [SOG]
744. SHO Showkat Ali Malik, Station House Officer, Rajouri Police Station
745. SHO Syed Gazanfar Ali, Station House Officer, Police Station Nowgam
746. SHO, Abdul Rashid Khan [Operational name: Rashid Billa], Station House Officer, Soura Police Station [later promoted as SDPO (Sub-Divisional Police Officer), Soura]
747. SHO, Aftab, Station House Officer, Sopore Police Station
748. SHO, Arshid Khan, Station House Officer, Police Station Srigufwara
749. SHO, Ayoub Rather, Station House Officer
750. SHO, Farooq Ahmad Padder, Station House Officer
- 751.** SHO, Gazanfar Ali [Operational name: Chulbul Pandey], Station House Officer, Sopore Police Station
752. SHO, Ghulam Rasool, Station House Officer, S. R. Gunj Police Station
753. SHO, Haq, Station House Officer, Parimpore Police Station
754. SHO, Imtiyaz
755. SI Abdul Rashid, Sub-Inspector, Pampore Police Station
756. SI Ashiq Hussain, Sub-Inspector, Pampore Police Station
757. SI Farooq Ahmad, Sub-Inspector
758. SI Feroz Ahmad, Sub-Inspector
759. SI Manzoor Ahmad, Sub-Inspector, Pampore Police Station
760. SI Mohammad Amin, Sub-Inspector, Special Operations Group [SOG], Lethpora Camp, Awantipora
761. SI Mohammad Yousuf, Sub-Inspector, Special Operations Group [SOG]
762. SI Parvaiz Ahmad Shah, Sub-Inspector, Special Operations Group [SOG]

763. SI Ramesh, Sub-Inspector, Special Operations Group [SOG], Joint Interrogation Center [JIC], Khanabal
 764. SI Rashid, Sub-Inspector, Special Operations Group [SOG]
 765. SI Zahoor Ahmad, Sub-Inspector, Soura Police Station
 766. SP Mohammad Amin Bhat, Superintendent of Police, Anantnag [reportedly died subsequently]
 767. SP Sevak Singh, Superintendent of Police
 768. SP Zahid Malik, Superintendent of Police
 769. SPO Ashiq Hussein, Special Police Officer
 770. SPO Bharat Bhushan, Special Police Officer
 771. SSP Altaf Ahmad Khan, Senior Superintendent of Police
 772. SSP Ashiq Bukhari, Senior Superintendent of Police [retired]
 773. SSP Hans Raj Parihar, Senior Superintendent of Police
 774. SSP Harmeet Singh, Senior Superintendent of Police
 775. SSP Manohar Singh, Senior Superintendent of Police
 776. SSP Ramesh Kumar Jalla, Senior Superintendent of Police
 777. Tanveer Ahmad Mir [Operational name: Kaka Mir], Special Operations Group [SOG]
 778. Tariq Ahmad Guroo, Special Police Officer [SPO], [Deceased]
 779. Tariq, Special Operations Group [SOG]
 780. Tasaduk Hussain, Jammu and Kashmir Police
 781. Urash Paul, Special Police Officer [SPO]
 782. Yasir, Special Police Officer [SPO] [deceased]
 783. Zaheer Abass Choudhary, Special Operations Group [SOG], Sumbal Camp
- IV. GOVERNMENT GUNMEN / ASSOCIATES**
[189]
784. "Sham Commander", Government Gunman [Ikhwan]
 785. "Vitt" Ganai, resident of Malakhnag, Government Gunman [Ikhwan]
 786. Abbas Bangali, Government Gunman [Ikhwan] [resident of Islamabad]
 787. Abbas, Government Gunman [Ikhwan] [resident of Bandipora]
 788. Abdul Hamid Bhat, Army informer
 789. Abdul Jabbar Ganai, Government Gunman
 790. Abdul Majeed, Government Gunman [Ikhwan]
 791. Abdul Qayoom Tantray, Government Gunman [Ikhwan]
 792. Abdul Rasheed Hakim, Government Gunman [Muslim Mujahideen]
 793. Abdul Rashid Ganai, Government Gunman
 794. Abdul Rashid Hajam, resident of Raipora, Government Gunman [Muslim Mujahideen]
 795. Abdul Rashid Malla, Government Gunman
 796. Abdul Rashid Pahloo, Commander, Government Gunman [Ikhwan]
 797. Abdul Rashid Parray alias Rashid Billa, Government Gunman [Ikhwan]
 798. Abdul Rehman Shalla alias Dilawar [Nik Shalla], resident of Hajin, Government Gunman [Ikhwan]
 799. Abdul Sattar, associate of SPO Mohammad Ashraf
 800. Abdul Shaban Tantray, Government Gunman
 801. Abdullah Yattoo, Government Gunman
 802. Ahad Kol, Government Gunman [Ikhwan]
 803. Ahad Manda, Government gunman [Ikhwan]
 804. Aijaz Ahmad, Government Gunman [Ikhwan]
 805. Ajaz Ahmad, brother of Hilal Ahmad Sheikh
 806. Akbar Khan, Government Gunman [Ikhwan]
 807. Ali Bengali, Government Gunman
 808. Ali Kulloo, Government Gunman [Ikhwan]
 809. Ama Chacha, Government Gunman [Ikhwan]
 810. Amma Kol, alias Cobra, Government Gunman [Ikhwan]
 811. Ashraf Ali Beig, son of Ghulam Rubani, Government Gunman [Ikhwan]
 812. Ayoub Khan/Mir alias Ayoub Nabdi, Government Gunman [Ikhwan]
 813. Ayoub Wagay [also referred to as Ayoub Khan], son of Samad Wagay, Government Gunman [Ikhwan]
 814. Azad Ahmad Mir [Operational name: Asgar], Informer, Border Security Force [BSF]
 815. Aziz Rather, Government Gunman
 816. Bahadur Khan, Government Gunman [Ikhwan]
 817. Bashir Ahmad Katoo, resident of Katoo, Bijbehara, Government Gunman [Ikhwan]
 818. Bashir Ahmad Lone, Army informer
 819. Bashir Ahmad Malla, Government Gunman [Ikhwan]
 820. Bashir Ahmad Parray alias Bilal, Government Gunman [Ikhwan]
 821. Bashir Ahmad Pehlu, Government Gunman [Ikhwan]
 822. Bashir Ahmad Rather, alias Chengez, Government Gunman [Ikhwan]
 823. Bashir Gagur, Government Gunman [Ikhwan]
 824. Bashir Khan, Government Gunman [Ikhwan]
 825. Bashir Yaar, Government Gunman [Ikhwan]
 826. Batu Sofi, resident of Pattan, Baramulla district, Government Gunman [Ikhwan]
 827. Chidiya, Government Gunman [Ikhwan]
 828. Dund Resh, Informer to army
 829. Farooq Ahmad Beigh, Government Gunman [Ikhwan]
 830. Farooq Gada, Government Gunman [Ikhwan]
 831. Farooq Laway, Government Gunman [Ikhwan]
 832. Fayaz Ahmad Dar [Operational name: Jambu], son of Rehman Dar, Government Gunman [Ikhwan]
 833. Fayaz Ahmad Mir alias Fayaz Nabdi, Government Gunman [Ikhwan]
 834. Fayaz Ahmad, resident of Malangam, Government Gunman [Ikhwan]

835. Fayaz, Government Gunman [Ikhwan]
836. GaniGour resident of Beyur, Bijbehara, Government Gunman [Ikhwan]
837. Ghulam Ahmad Laway, Government Gunman [Ikhwan]
838. Ghulam Ahmad Malik [also known as Jehangir], Government Gunman [Ikhwan]
839. Ghulam Ahmad Yattoo, Government Gunman
840. Ghulam Hassan Baba, Government Gunman [Ikhwan]
841. Ghulam Hassan Parray, Government Gunman [Ikhwan]
842. Ghulam Hassan Rahil, Government Gunman [Ikhwan]
- 843.** Ghulam Hassan Wagay, son of Mohammad Wagay [reportedly killed subsequently by militants], Government Gunman [Ikhwan]
844. Ghulam Mohammad Kaloo [Operational names: Ghulam Mohammad Sheikh / Mama Ikhwani], Government Gunman [Ikhwan]
845. Ghulam Mohammad Margoo [Operational name: Mohammad Pir], son of GaffarMargoo Government Gunman [Ikhwan]
846. Ghulam Mohammad Mir alias MumaKanna, Government Gunman [Ikhwan]
847. Ghulam Mohammad Waza alias AmmaWaza, Government Gunman
848. Ghulam Mohammad, resident of Kadipora, Tangmarg, Government
849. Ghulam Mohammad, resident of Palhallan, Baramulla district, Government Gunman
850. Ghulam Hamdum Beigh, son of Ghulam Rubani, Government Gunman [Ikhwan]
851. Ghulam Mohi-ud-din Dar, resident of Droosu, Watergan, Government Gunman commander [Ikhwan] [deceased]
852. GhulamMohiuddin Kana, Commander, Government Gunman [Ikhwan]
853. GhulamNabi Dar, Government Gunman
854. GhulamNabi Khan, Government Gunman [Ikhwan]
855. Ghulam Nabi Bhat, Government Gunman
856. Ghulam Nabi Kawa, Government Gunman
857. Ghulam Nabi Manda, Government gunman [Ikhwan]
858. Ghulam RasoolWagay, alias KachGour, Government Gunman [Ikhwan]
859. GulToth, Government Gunman [Ikhwan]
860. Gulzar Ahmad Bhat, Government Gunman [Ikhwan]
861. Hamza Khan, Government Gunman [Ikhwan]
862. Haseen Khan, resident of Didikote, Government Gunman [Ikhwan]
863. Hilal Ahmad alias Sahaba
864. Hilal Ahmad Sheikh, resident of Madina Colony, Bemina
865. Hozoor Dar, Government gunman [Ikhwan]
866. Idrees Baba, Government Gunman [Ikhwan]
- 867.** Irshad Ahmad Sofi
868. Irshad Mir, resident of Ajas, Government Gunman [Ikhwan]
869. Javaid Ahmad Reshi, Army informer
870. Javed Mir, Government Gunman [Ikhwan]
871. Jeela Shah, Government gunman [Ikhwan] [deceased]
872. Junaid Dantar, Government Gunman [Ikhwan]
873. Khati, spouse of Mohammad YaseenSofi
874. Khurshid Ahmad Khan, resident of Baramulla, Government Gunman [Ikhwan]
875. Lasa Tulmulla, Government Gunman [Ikhwan]
876. Lateef Ahmad, Government Gunman
877. Latief Mir, Government Gunman
878. Mana Rada, Government Gunman [Ikhwan]
879. Manna Grenade, Government Gunman
880. Mansoor Sofi, Government Gunman [Ikhwan]
881. Manzoor Ahamad Parray, Government Gunman [Ikhwan]
882. Manzoor Ahmad Mir, Government Gunman [Ikhwan], resident of Bandipora.
883. Manzoor Ahmad Mir, Government Gunman [Ikhwan], resident of Delina, Baramulla.
884. Manzoor Ahmad Reshi, Government Gunman [Ikhwan]
885. Manzoor Ahmad Sheikh, son of Abdul Rashid Sheikh, Army source
886. Manzoor Ahmad, Government Gunman [Ikhwan]
887. Manzoor Nabdi, Government Gunman [Ikhwan]
888. Masrat Bilal, Government Gunman [Ikhwan]
889. Mir Zaman, Government Gunman [Ikhwan]
890. Mohammad Afzal Mir, Government Gunman [Ikhwan]
891. Mohammad Akbar, resident of Alibagh, Sopore, Government Gunman [Ikhwan]
892. Mohammad Amin Sheikh [Operational name: Manzoor], son of Habibullah, Government Gunman [Ikhwan]
893. Mohammad Ashraf Khan [Operational names Umar / Bhai Jan], son of Habibullah Khan, Government Gunman [Ikhwan]
894. Mohammad Ashraf Wani [Operational name: Asif], resident of Bugam [presently in Territorial Army], Government Gunman [Ikhwan]
895. Mohammad Ayoob Dar, Government Gunman [Ikhwan]
896. Mohammad Bashir [Unit not ascertained]
897. Mohammad Lateef Mir alias Jarra, Government Gunman
898. Mohammad Maqbool alias Magseer, resident of Hajin, Government Gunman [Ikhwan]
899. Mohammad Ramzan Mian alias Hayat Khan, resident of Pattan, Commander, Government Gunman [Muslim Mujahideen] [deceased]
900. Mohammad Shaban Tantray, alias Shaban Kawa, resident of Tantray Pora, Government Gunman [Muslim Mujahideen]
901. Mohammad Shafi Lone, Government Gunman [Ikhwan]
902. Mohammad Shafi Peer, Government Gunman [Ikhwan]
903. Mohammad Sultan Dar, Government Gunman [Ikhwan]

904. Mohammad Sultan Mir [Operational name: Sula Buchpuri], Government Gunman [Ikhwan]
- 905.** Mohammad Yaseen Sofi
906. Mohammad Yousuf Akhoon, Army informer
907. Mohammad Yousuf Mir, Government Gunman [Ikhwan]
908. Mohammad Yusuf Dar, resident of Chaksari, Warpora, Pattan, Government Gunman
909. Mohammed Ismail Kawa, Government Gunman
910. Mohiuddin Pitch, Government Gunman [Ikhwan]
911. Moinuddin Kazmi, Government Gunman [Ikhwan]
912. Mome Ikhwan, Government Gunman [Ikhwan]
913. Mukhtar, resident of Mirgund, Government Gunman
914. Mushtaq Ahmad Ganai alais "Mush Ganai", Government Gunman [Ikhwan]
915. Mushtaq Ahmad Ganaie, Informer, 22nd Battalion, Grenadiers, Army
916. Mushtaq Ahmed Paul, CAT [Informer for the Army], Camp Dharmuna
917. Mushtaq Ahmed Pir, resident of Andergam, Government Gunman
918. Mushtaq Pal, Government Gunman
919. Mushtaq Sheikh, resident of Kupwara town, Government Gunman [Ikhwan]
920. Muzaffar Khan, resident of Uri, Baramulla, Government Gunman [Ikhwan]
921. Nazeer Ahmad Wani, resident of Saderkoot, Balla, Government Gunman [Ikhwan] [deceased]
922. Nazir Ahmad Bhat, son of Mohammad Maqbool Bhat, resident of Aloosa Tehsil, Bandipora district, Informer, 27 Rashtriya Rifles [RR] [Maratha Light Infantry]
923. Nazir Ahmad Kochak alias Mumtaz, resident of Hajin, Government Gunman [Ikhwan]
924. Nazir Ahmad Lone, alias Nazir Gurra, Government Gunman [Ikhwan]
925. Nazir Ahmad Parray alias Fauji, Government Gunman [Ikhwan]
926. Nazir Ahmad Wani
927. Nazir Ahmad Wani, Government Gunman [Ikhwan]
928. Nazir Ahmed Kandroo, resident of Sher Colony, Sopore, Government Gunman [Ikhwan] [deceased]
929. Nazir Sofi, Government Gunman [Ikhwan]
930. Nisar Ahmad Dar, resident of Khudwani Government Gunman [Ikhwan], [presently in Territorial Army]
931. Noor Mohammed Pandit, resident of Hamray, Government Gunman
932. Parvez Ahmad Querishi [Operational name: Shahbaz], son of Aftab Ahmad, Government Gunman [Ikhwan]
933. Rafiq, resident of Kanilwan, Bijbehara, Government Gunman [Ikhwan]
934. Raheem Kachur, resident of Khurhama, Ganderbal district, Government Gunman [Ikhwan]
935. Rameez Ahmad Dar, alias Mohammad Ramzan, resident of Aloosa Tehsil, Bandipora district, Informer, 27 Rashtriya Rifles [RR] [Maratha Light Infantry]
936. Rasheed Peer, resident of Dangerpora, Ganderbal, Government Gunman [Ikhwan]
937. Rashid Bucha, Government Gunman [Ikhwan]
938. Rashid Kanbay, Commander, Government Gunman [Ikhwan], Hakeem Gund Ikhwan camp
939. Rashid Manda, Government gunman [Ikhwan]
940. Rehman Chabee, Government Gunman [Ikhwan]
941. Riyaz Ahmad, Government Gunman
942. Rouf Changa, Government Gunman [Ikhwan]
943. Saddam, Commander, Government Gunman [Ikhwan]
944. Sadiq Khan, resident of Didikote, Government Gunman [Ikhwan]
945. Saeb Hajam [Nickname/Code name], Government Gunman
946. Salim, resident of Alibagh, Sopore, Government Gunman [Ikhwan]
947. Sameer Darzi alias Babloo, Government Gunman [Ikhwan]
948. Sarwar Ganai, resident of Chogul, Government Gunman [Ikhwan]
949. Sattar Sofi, Government Gunman [Ikhwan]
950. Seth Gujjar, Government Gunman [Ikhwan] [deceased]
951. Shabir Ahmad Bhat, Government Gunman [Ikhwan]
952. Shabir Sofi, Government Gunman [Ikhwan]
953. Shabir, resident of Asham, Government Gunman [Ikhwan]
954. Shafaat, resident of Guree, Islamabad, Government Gunman [Ikhwan]
955. Shafi, Government Gunman [Ikhwan]
956. Shafiq Pandith, Government Gunman [Ikhwan]
957. Shahnawaz, Government Gunman [Muslim Mujahideen]
958. Shakeel Ahmad, [Operational name: Tiger], resident of Poniwah, Kulgam [presently in Territorial Army], Government Gunman [Ikhwan]
959. Shal Boug, Government Gunman [Ikhwan]
960. Sheikh Tahir alias Tahir *Fuf*, Government Gunman [Ikhwan] [presently in Territorial army]
961. Sher Khan, resident of Mirgund, Baramulla District, Government Gunman [Ikhwan] [deceased]
962. Shera, resident of Shilwat, Government Gunman
963. Showkat Muqam, Government Gunman [Ikhwan]
964. Sikandar Ganai, Government Gunman

[Ikhwan]

965. Sul Karnayee, Government Gunman [Ikhwan]

966. Sultan Ganai, Government Gunman [Ikhwan]

967. Tariq Gada, Government Gunman [Ikhwan]

968. Tariq Hussain, associate of SPO Mohammad Ashraf

969. Usman Majeed, Government Gunman [Ikhwan]

970. Wali Mohammad Mir, Government Gunman [Ikhwan]

971. Yousuf Kashu, Government Gunman [Ikhwan]

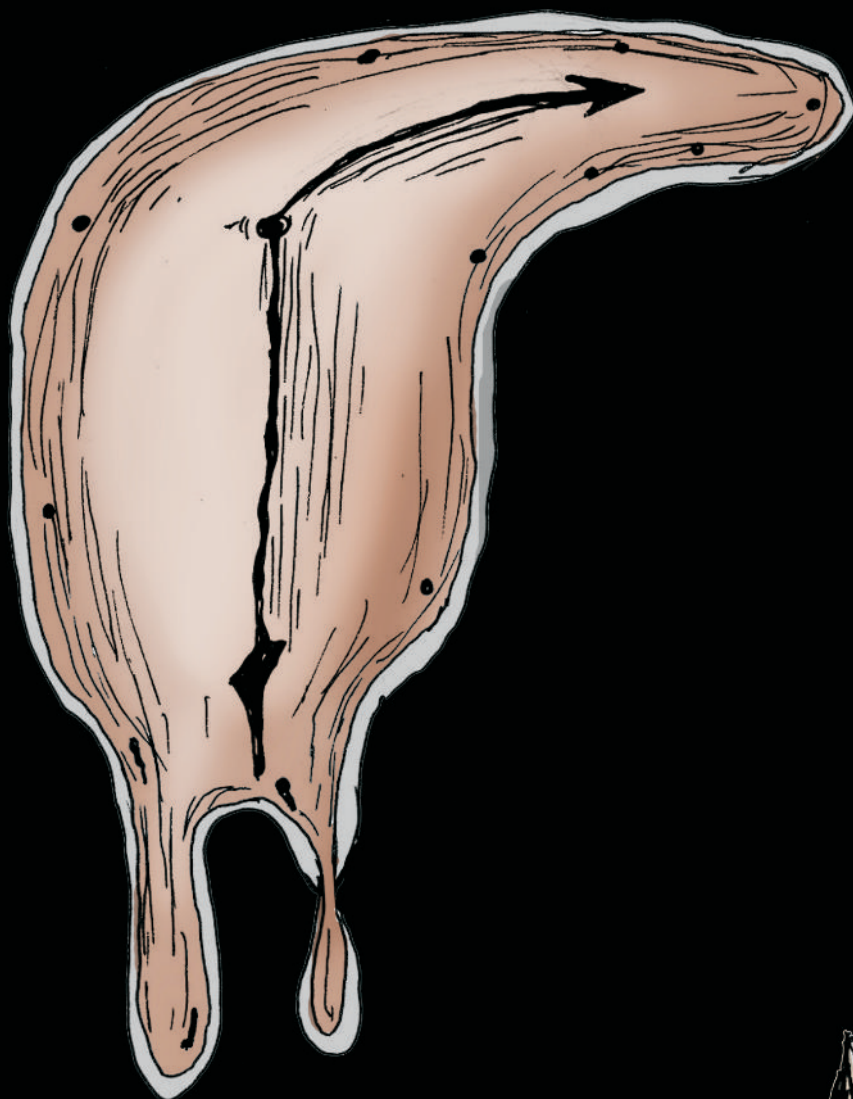
972. Zahoor Ahmad Wagay, son of Sonauallah Wagay, Government Gunman [Ikhwan]

ENFORCED DISAPPEARANCE

Enforced disappearance is the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

[Article 2, International Convention for the Protection of all persons from Enforced Disappearance]

This Sub Chapter has 73 Case Studies



PART B: ENFORCED DISAPPEARANCE

Case No. 1

Victim Details

Raja Ali Mardan Khan [Enforced Disappearance]
 Age: 60
 Occupation: Worked at the Co-operative store
 Son of: Wali Mohammad Khan
 Resident of: Bela, Salamabad, Boniyar, Baramulla District

Alleged Perpetrators

1. Major Thapa, 3rd Sikh Regiment, Army, Camp Boniyar

Case Information

On 13 May 1990 at about 6:00 pm, Raja Ali Mardan Khan was picked up between the Boniyar market and his residence. In 1990, from the Boniyar market to the residence of the victim, both sides of the road were lined with army camps and bunkers. The regiment in the area was the 3rd Sikh Regiment. Persons in the area confirmed to the family of Raja Ali Mardan Khan that he was picked up by army personnel. Raja Ali Mardan Khan has disappeared since. On the evening of his disappearance, his daughter went to the house of Mohammad Shafi Geelani. There was a raid conducted by Major Thapa. Major Thapa asked the daughter of the victim where her father was. She said he would be returning from work. Major Thapa told her he would not return that day. Based on this exchange, the daughter of the victim believes that Major Thapa was responsible for the disappearance of her father.

A report was filed before the Station House Officer [SHO] Baramulla Police Station but no First Information Report [FIR] was filed. The police claim that Boniyar Police Station, based on information from Javed Ahmad Khan, the son of the victim, filed a missing persons report vide no.5 in the police Daily Diary on 18 May 1990.

The daughter of Raja Ali Mardan Khan states that following the incident, the family visited various officials, including the Inspector General of Police [IGP], Kashmir and the Divisional Commissioner, Kashmir. Following this, Major Thapa threatened the family of Raja Ali Mardan Khan and raided their house several times to influence them to not pursue the case. Based on this, the daughter of Raja Ali Mardan Khan is convinced that Major Thapa was responsible for the abduction and disappearance of Raja Ali Mardan Khan.

The son of Raja Ali Mardan Khan filed a petition

before the High Court of Jammu and Kashmir in 1995 but did not pursue the case. Another petition was filed by the daughter of Raja Ali Mardan Khan before the High Court for the registration of a FIR, investigations and compensation [Original Writ Petition (OWP) no.[6/18/2005]¹. The Government of Jammu and Kashmir of Jammu and Kashmir and the police authorities submitted joint objections to the High Court dated 17 April 2006. It was confirmed that a missing report no.5 dated 18 May 1990 was entered in the Daily Diary of the Boniyar Police Station. The police through all available resources conducted the search of Raja Ali Mardan Khan but could not trace him despite strenuous efforts. The search was continuing. The petition was dismissed for lack of representation on 7 June 2007.

The family of Raja Ali Mardan Khan received no relief or compensation, as per the statement of the son of Raja Ali Mardan Khan given to the IPTK on 20 February 2012. The daughter of Raja Ali Mardan Khan gave a statement to the IPTK on 17 September 2012.

Raja Ali Mardan Khan resided in an area that falls very close to the Line of Control between the Indian and Pakistani administered Kashmir. The area is under heavy army control. This could explain the fear faced by the family of Raja Ali Mardan Khan that resulted in litigation not being pursued in this matter.

It is significant that without the filing of a FIR for 16 years [and perhaps to date] the police states that the search for Raja Ali Mardan Khan continues. This confirms the disappearance of Raja Ali Mardan Khan. The non-investigation and prosecution has created a cover for Major Thapa.

Further, based on available documents with the IPTK, it appears that the Ministry of Defence, Deputy Commissioner, Baramulla and the 3rd Sikh Regiment have not filed any objections to the High Court petition. This displays a disregard for the High Court and the processes of justice.

Case No. 2

Victim Details

Mohammad Shafi Dar [Enforced Disappearance]
 Age: 19
 Occupation: 12th Standard student
 Son of: Ghulam Mohammad Dar [deceased], Raja [deceased]
 Resident of: Gulab Pora, Mahrajpora, Tengpora, Bypass Srinagar District [present address], previously resident of Lachmanpora, Danderkhah, Batamaloo, Srinagar District

¹ Information on the petition number OWP 618/2005 was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. Information was provided.

Alleged Perpetrators

1. Major [Deputy Commandant] Chuhan, 141st Battalion Border Security Force [BSF], Camp Batamaloo bus stand

Case Information

On the intervening night of 22 and 23 May 1990, Mohammad Shafi Dar was taken by personnel of the 141st Battalion BSF headed by Major Chuhan. The victim subsequently disappeared, though the family of the victim was informed that he died during the interrogation. The victim was taken to the Joint Interrogation Centre [JIC], Hariniwas where he was tortured. Another person, Aijaz Ahmad Bhat, also picked up with the victim, was also detained at the interrogation centre and confirmed the presence and torture of the victim to his family.

The Batamaloo Police Station entered the details of the incident in the Daily Diary report no.14, on 4 June 1990.

On 21 February 2003, the victims name figured in a list of 45 people cleared by the Government of Jammu and Kashmir for grant of relief in favour of next of kins of missing persons. However, his brother Nisar Ahmad Dar was informed by one of the officials at Deputy Commissioner, Srinagar's office that the file has been closed. The official could not provide any reasons.

The victim's family approached the State Human Rights Commission [SHRC] on 26 March 2003. The SHRC issued a decision on 20 November 2007 indicting Major Chuhan, directing that a case be registered and recommending that relief of Rs. 2,00,000 be paid to the family of the victim and compassionate employment under SRO-43 [Statutory Rules and Orders] also be provided.

Over the inaction on implementation of this decision of the SHRC, the family of the victim filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 311/2009]². The BSF stated before the High Court that while the victim, and Aijaz Ahmad Bhat, were arrested by the BSF [but the date of the event is placed as 23 and 24 May 1990], they were handed over to the JIC, Hariniwas and the BSF received no further information regarding the two persons. The Government of Jammu and Kashmir and Jammu and Kashmir Police submitted before the High Court that First Information Report [FIR] no. 87/2008 u/s 364 [Kidnapping /Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Batamaloo Police Station³. By communication dated 30 November 2013 from the Jammu and Kashmir Police it was stated that the case was under investigation.

Further, it was submitted that the SHRC was a recommendatory body and therefore the benefits recommended could only be actioned following the ascertainment of the cause behind the disappearance of the victim. Based on the filing of the FIR, the BSF and the SHRC were deleted as parties from the proceedings, vide an order dated 11 December 2010.

The family of the victim gave a statement to the IPTK on 27 February 2012.

Based on the representations of the BSF before the High Court, the arrest of the victim by the BSF, and subsequent transfer to the JIC is established.

The SHRC sought a report from the Inspector General of Police [IGP], Kashmir who furnished a report on 11 March 2004. The police report confirms the lifting of the victim by the 141st Battalion BSF on 22 and 23 May 1990 but also states that the victim was working with the Al-Jehad outfit at the time. The family of the victim contended that the victim was lifted by the 141st Battalion BSF headed by "Major Chaun" [the spelling of the alleged perpetrator is as stated in the SHRC judgment]. The SHRC heard witness testimony. Witness Shabir Ahmad Dar, a cousin of the victim, stated that the victim and Aijaz Ahmad were picked up in the year 1990 by the BSF. The witness also stated that the victim was not involved in any subversive activity nor affiliated with any militant outfit. The mother of the victim also confirmed that her son was not involved in any militancy. The SHRC stated that: "merely alleging that the subject was working with Al-Jehad will not suffice to establish that the victim was indulging in militancy. However even if it is assumed that the subject was working for Al-Jehad outfit, it is admitted by the police that he was lifted by the BSF 141 Battalion headed by Commanding Officer Mr. Chaun. Even the criminals or the detainees have human rights and they are not deprived from these right...no right has been given to the police or army to arrest a person on suspicion and kill him during the interrogation. This will be no justification for the BSF to do away with the victim. Victim should have been produced before the court of law, after being charged and challaned under law. This shows that the army and the police forces have utterly failed not only to protect the life of the victim but the apprehension of the complainant seems to be correct that during the custody her son had been killed. This is a gross human rights violation committed by the BSF personnel; it is being done by them because there **is no accountability of such forces**" [emphasis by the SHRC]. Consequently, the SHRC recommended that a case be registered against Mr. Chaun and recommended relief and SRO-43 benefits to the family of the victim.

The SHRC indictment of both the police and the army

2 Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Information was provided but the present status of the petition is unknown.

3 Information on this FIR was sought through RTI on 5 May 2012. A copy of the FIR was provided by the Jammu and Kashmir Police. Further information sought through RTI on 15 October 2013.

is usefully placed in the larger context of a lack of accountability. But, a criticism of the SHRC decision would be that it fails to delve deeper into the issue of where **exactly** the victim may have died. The family of the victim and Aijaz Ahmad Bhat accept that the victim was transferred to the Joint Interrogation Centre. Therefore, technically, the BSF, and Major Chuhan could well claim that no liability attaches to them. Nonetheless, what is beyond doubt is the death of the victim, and the BSF and the police would certainly be answerable to any investigations that would be carried out.

Further, it is unfortunate that despite a decision from the SHRC, the family of the victim is yet to receive any relief/compensation.

It is noteworthy that it took the Jammu and Kashmir Police 18 years to file a FIR in the case and to date it appears no progress has been made in the case. The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir but no information was provided. Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Case No. 3

Victim Details

1. Latief Khan [Torture and Enforced Disappearance]
Age: 45
Occupation: Fruit business, shop owner and an ex-serviceman [army driver]
Son of: Yakoob Khan
Resident of: Chandanwari, Boniyar, Uri, Baramulla district
2. Bashir Ahmad Khan [Abduction, Wrongful Confinement, Torture and Extra-Judicial Killing (Custodial Killing)]
Age: 45
Son of: Ali Akbar Khan
Resident of: Chandanwari, Boniyar, Uri, Baramulla district
3. Samad Saraf [Abduction, Wrongful Confinement and Torture]
Resident of: Sangri Colony, Baramulla

Alleged Perpetrators

1. Assistant Commandant Pandey, 46th Battalion Central Reserve Force [CRPF]
2. Deputy Superintendent of Police [DSP] S.M. Sahai, Uri [presently Inspector General of Police (IGP), Kashmir], Jammu and Kashmir Police
3. Constable Ghulam Nabi, Jammu and Kashmir Police
4. Constable Mohammad Ashraf, Jammu and

Kashmir Police

5. Fareed, Jammu and Kashmir Police [reportedly killed]

Case Information

The family of Latief Khan states that on 14 July 1990 at about 4:00 am a joint group of CRPF and police personnel came to the house of Latief Khan. Assistant Commandant Pandey and DSP S.M.Sahai were present. Latief Khan was taken out of the house, beaten with a piece of wood and then taken away. The rest of the family was locked inside the house. Further, the beddings in one of the rooms were burnt.

Three police personnel accompanying the group were recognized by the wife of the victim, Latief Khan. They were: Mohammad Ashraf, Ghulam Nabi and Fareed. They were the guards of DSP S.M.Sahai. Subsequently, Bashir Ahmad Khan was picked up from his house, and Samad Saraf [who used to stay at the residence of Latief Khan and work as a salesman at a shop] was picked up from the mosque after he had offered prayers.

All three were taken to the Matches factory, Baramulla. When the family of Latief Khan approached DSP S.M.Sahai they were given various excuses and were told that Latief Khan would be released. He also stated that the CRPF was questioning the victims at the Matches factory, Baramulla.

On 17 July 1990, the body of Bashir Ahmad Khan was found in the Jhelum river. On 31 July 1990, Samad Saraf was released. He informed the family of Latief Khan that at the Matches factory, Baramulla, all three victims had been tortured.

On various occasions, Jaswant Singh, Additional Deputy Inspector General [DIG] of Police, Criminal Investigations Department [CID], Counter Intelligence Kashmir [CIK], Srinagar issued permissions to the family of Latief Khan to meet with the victim at various locations. But, Latief Khan was never found.

Samad Saraf, in an audio recorded interview to the IPTK on 6 March 2012, is unclear of the actual date of abduction ["In the year 1990, May or August either it was 7 August or 8 August"].

Further, a contradiction with the events as recounted by the family of Latief Khan, Samad Saraf states that he was at the house when the police and the CRPF came to the residence of Latief Khan, where he too was staying. DSP S.M.Sahai asked Samad Saraf if Abdul Rashid Querishi had sold ammunition to Latief Khan. Samad Saraf denied the allegation in defence of Latief Khan. Samad Saraf then confirms that DSP S.M.Sahai and others beat Latief Khan. While Latief Khan was being beaten, a police personnel asked whether Samad Saraf was getting late for his morning

prayers. Samad Saraf then left for the mosque. After his prayers at the mosque, Samad Saraf was picked up by CRPF personnel and put into a vehicle where he saw Bashir Ahmad Khan. They were taken to the Matches factory camp. At the camp they were interrogated and beaten. Bashir Ahmad Khan was tortured and died in custody. Samad Saraf was shifted to a few locations, interrogated, and asked to name persons who came across the line of control from Pakistan. Subsequently, after “18-19” days, he was released.

Also of interest is a letter sent on 25 September 1990 from Qazi Mohammad Amin, District Magistrate, Baramulla, to M. Rehman, Additional Chief Secretary, Jammu and Kashmir Home Department, which pleads for the release of Latief Khan on behalf of the family. What is of interest in this letter is that the District Magistrate appears to accept that the victim had been picked up by the CRPF and “DySP Uri” on 14 July 1990.

The family of Latief Khan received Rs. 1,00,000 ex-gratia government relief but no compassionate employment under SRO-43 [Statutory Rules and Orders]. The family of Latief Khan gave a statement to the IPTK on 20 February 2012.

First Information Report [FIR] 2/1991 u/s 365 [Kidnapping / Abducting with intent to secretly and wrongfully confine] Ranbir Penal Code, 1989 [RPC] was filed at the Uri Police Station on 6 February 1991⁴. The FIR places the date of incident as 6 July 1990. The incident in the FIR is limited to the abduction of Latief Khan by the CRPF. By communication dated 22 April 2014 from the Jammu and Kashmir Police a copy of the FIR and the final report – closure report – was provided. The closure report states that nothing was found out in the case. The final report was filed on 12 November 1993.

On 10 October 2009, following an enquiry conducted by the Tehsildar, Boniyar, the Sub-Divisional Magistrate, confirmed that Latief Khan was killed in army custody and was declared as dead as on 2 May 1998 [the death certificate lists his death as on 10 April 1999].

The family of Latief Khan filed a petition before the High Court of Jammu and Kashmir [HCP 47/1991]⁵. The Government of Jammu and Kashmir denied the arrest of Latief Khan. On 20 May 1994 a judicial enquiry was ordered. But, the case file was only received by the District and Sessions Judge, Baramulla on 12 August 1999. The enquiry conducted by the District and Sessions Judge, Baramulla was concluded on 20 February 2003 and stated that the applicant was asked to adduce his

evidence and was given number of opportunities but failed to do so. The enquiry report concluded that the allegations had not been proved. Based on this report, the High Court dismissed the petition on 1 April 2003.

The family of Latief Khan informed the IPTK that they had sought to produce their evidence before the judicial enquiry. But, on the day they had gone to do so no evidence was heard and they were told that they would be informed on when to return. But, they were not informed subsequently.

As per publicly available information, DSP S.M.Sahai was awarded the Director General of Police's Commendation Medal for 1994, Police Medal for Gallantry in 2004, Sher-e-Kashmir Medal for Gallantry in 2007 and 2013, Sher-e-Kashmir Medal for Meritorious Service in 2011 and the Presidents Medal for Distinguished Service in 2011.

It appears the police closed the case despite evidence on record. It also needs to be ascertained whether the closure report was filed before a court of law and whether a formal order closing the case was passed. Further, considering the testimony of the family of Latief Khan, the manner in which the High Court ordered judicial enquiry was conducted is open to strong criticism.

The absolute impunity in this case for Assistant Commandant Pandey is clear as the IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

Case No. 4

Victim Details

1. Fayaz Ahmad Shalla [Enforced Disappearance]
Occupation: Shawl hawker and feather dealer [in Nepal]
Son of: Mohammad Ismaiel Shalla
Resident of: Qazi Masjid, Habakadal, Srinagar
2. Bashir Ahmad Shalla [Torture, Extra-judicial killing]
Son of: Mohammad Ismaiel Shalla
Resident of: Qazi Masjid, Habakadal, Srinagar

4 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. By communication dated 30 November 2013 from Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI dated 14 November 2014.

5 Information on the petition number was sought through RTI on 2 July 2012. Information was provided.

Alleged Perpetrators

1. Personnel, 67th Battalion Central Reserve Police Force [CRPF], A Company

Case Information

Fayaz Ahmad Shalla was picked up by CRPF personnel on 16 July 1990 and was taken to his residence. Subsequent to that he was taken to an unknown destination and then brought back to his house for a search at 9:30 pm. Nothing was recovered at his residence. The family of the victim state that the victim was in a terrible condition. During the second raid, the brother of the victim, Bashir Ahmad Shalla, was picked up and tortured at Hariniwas Interrogation Centre. He was subsequently released [but due to the torture he died later on]. Subsequent to that Fayaz Ahmad Shalla disappeared. The Deputy Inspector General of Police [DIG], Criminal Investigations Department [CID], Counter Insurgency Kashmir [CIK], Jaswant Singh informed the family that Fayaz Ahmad Shalla was in the Joint Interrogation Centre. Further, the Deputy Commissioner, Srinagar and Wajahat Habibullah, Divisional Commissioner, Srinagar, confirmed to the family of the victim that he was a militant and could not be released.

The family of Fayaz Ahmad Shalla gave a statement to the IPTK on 10 March 2012.

The family of Fayaz Ahmad Shalla filed a petition [habeas corpus petition, HCP 346/1991] before the High Court of Jammu and Kashmir. On 15 April 1991 the High Court ordered that an interview be arranged between Fayaz Ahmad Shalla and his family and lawyer. As per the family, they were not allowed to avail of this order and meet with Fayaz Ahmad Shalla. On 20 May 1992, the Jammu and Kashmir Home Ministry submitted before the Court that the victim had not been picked up by “any of the security forces party in the valley”. The High Court appointed the District and Sessions Judge, Srinagar on 30 March 1995 as an enquiry officer, and a report was submitted on 12 May 1998 that confirmed that the victim was lifted by the CRPF on 16 July 1990 by CRPF personnel at Fateh Kadal, detained at the CRPF Camp, Fateh Kadal and then taken to the Interrogation Centre known as Papa-II [Fair View Guest House] and then the Interrogation Centre at Hariniwas, and the victim's whereabouts are not known subsequent to that. Following this, the High Court, on 15 December 1998, ordered that a case be registered and investigations carried out.

A contempt petition [no. 1/2001] was filed on 22 February 2001, a little less than two and a half years later, against the non-filing of the FIR.

Subsequently, FIR no. 88/2001 u/s 364 [Kidnapping /Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Maharaj Gunj [S. R. Gunj] Police Station, which places the date of the incident on 15 July 1990 and states that Fayaz Ahmad Shalla was arrested along with Tanveer Ahmad Dhobi⁶. They were detained at CRPF camp at Fateh Kadal and then sent to Papa-II Interrogation Centre. The victim disappeared. By communication dated 30 November 2013 from the Jammu and Kashmir Police it was stated that the case was under investigation.

In 1999, the family of Fayaz Ahmad Shalla filed another petition [Original Writ Petition (OWP) 199/1999] before the High Court for compensation of Rs. 10,00,000 for the killing of the victim. As per records submitted before the High Court, the investigation in the case was closed by declaring the perpetrators as untraced on 17 November 2001, but reopened on 18 July 2007. A status report of April 2009 before the High Court from the Jammu and Kashmir Police indicates that the particulars of the CRPF personnel involved are yet to be ascertained, and the forces in control of the interrogation centres has also not been ascertained. But, a compliance report filed by the police authorities in August 2011 suggests that four sections of the CRPF 67th Battalion, A Company were deployed at New Fateh Kadal for static picket duty between 20 December 1989 and 19 June 1991. The compliance report also states that in the year 1990-1993 the “ITBP [Indo Tibetan Border Police] force was deployed for guard duty in JIC instead of CRPF”. The CRPF, in their affidavit of 28 September 2011 confirms the compliance report to the extent that the 67th Battalion, A Company was deployed at New Fateh Kadal at the relevant time but states that the nominal roll of personnel deployed at Fateh Kadal on 15 July 1990 can no longer be traced. The CRPF, in its initial response before the High Court in 2000, denies any control over the interrogation centres and any role in the arrest of the victim. The police and the Government of Jammu and Kashmir state that they have no responsibility in the instant case and deny playing any role in the incident.

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Only information on OWP 199/1999 was provided. Information on petition 346/1991 was sought again on 4 April 2014.

The family of Fayaz Ahmad Shalla approached the State Human Rights Commission [SHRC] on 2 May 2001, and a decision was delivered on 25 March 2003 where ex-gratia government relief of Rs. 1,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders] were recommended. Further, the decision confirms the disappearance of

⁶ Information on the FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 2 June 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013.

Fayaz Ahmad Shalla. The family of Fayaz Ahmad Shalla received Rs.1,00,000 ex-gratia government relief but no compassionate employment under SRO-43 [Statutory Rules and Orders].

An enquiry by the District Magistrate, Srinagar, was constituted on 7 January 2003 to enquire into the incident as well.

As a preliminary point, the actions of the Jammu and Kashmir Police and the Government of Jammu and Kashmir would seem highly unsatisfactory in the instant case. First, the initial position of the government that no armed forces were involved in the incident was proved incorrect by the judicial enquiry report of 12 May 1998 and the SHRC decision of 25 March 2003 as will be seen below. Second, it appears to have taken the police authorities close to two and a half years to file a FIR despite the High Court ruling to that effect. Third, while the investigation was closed by declaring the perpetrators as untraced in 2001, no closure report was filed before the appropriate judicial authority until 2007 when the investigation was reopened. It appears from the order of the SSP, Srinagar, dated 18 July 2007, that the police was also mindful of this negligence as this order not only reopens the investigation but also orders a formal enquiry into the issue.

Before considering the findings of the judicial enquiry report of 12 May 1998 and the SHRC decision of 25 March 2003 [the results of the enquiry conducted by the District Magistrate, Srinagar are not available with the IPTK], the compliance report filed by the police before the High Court in August 2011 appears to implicate the four sections of the CRPF 67th Battalion, A Company which were deployed at New Fateh Kadal for static picket duty between 20 December 1989 and 19 June 1991. The presence of this battalion of the CRPF at the location during this period of time is not disputed by the CRPF before the High Court either, though the CRPF does suggest that no records of the “nominal roll of personnel” deployed at Fateh Kadal on 15 July 1990 are available as the case is twenty years old.

The judicial enquiry report was submitted on 12 May 1998. The testimony of Ikhlaq Bashir Shalla, the cousin of Fayaz Ahmad Shalla, was recorded and was keeping in line with the allegations of the family. The witness was not cross-examined. Other witnesses also testified to the same sequence of events. Of most interest is the testimony of witness Abdul Aziz Rather who testified that he had met Fayaz Ahmad Shalla in the interrogation centre known as Papa-II and that he was told that the victim would be released very soon. Another witness, Ali Mohammad Bhat, also testified to meeting Fayaz Ahmad Shalla at the same interrogation centre. Both witnesses were cross-examined, but not on this particular piece of evidence. Witness Tanveer Ahmad Dhobi testified that he had himself been at the detention cell at Hariniwas interrogation centre and had met Fayaz Ahmad Shalla

there, but that on the next day the victim was taken away from that centre. Tanveer Ahmad Dhobi was in fact lifted at the same time and in the same circumstances as the victim by the CRPF. The judicial enquiry report therefore concludes that the victim was lifted by the CRPF, taken first to Hariniwas interrogation centre and then subsequently to the Papa-II detention centre. The judicial enquiry reached this conclusion by stating that “no doubt lurks in the mind of this court” and that the conclusions were “irresistible”.

Two additional comments may be made on the judicial enquiry report. Both the family, and consequently the judicial enquiry report, place this incident on 16 July 1990, whereas the High Court [and the SHRC] in its proceedings place this incident on 15 July 1990. It is unclear where the difference may have arisen from, but it does not damage the findings of the judicial enquiry report in any manner. Further, the response of the CRPF before the High Court in 2000 on the findings in the judicial enquiry report of 12 May 1998 is curious. The CRPF denies any role in the incident based purely on the fact that the judicial enquiry report failed to identify the unit of the CRPF involved and the registration number of the vehicle in which the victim was carried.

The SHRC based its decision on reports submitted by the Inspector General of Police [IGP], Kashmir Zone, Srinagar which confirmed that Fayaz Ahmad Shalla was lifted by the CRPF on 15 July 1990 and disappeared. The SHRC presumes the death of the victim and states that “missing person was neither himself a militant nor he had got any link with any militant outfit as there is no mention about this aspect in the above police report”.

Therefore, in addition to the negligence of the police and State, and the culpability of the CRPF, culpability may also be attracted by other forces as the victim appears to be at different points in the Hariniwas interrogation centre and Papa-II. The question then arises on who had control over these centres.

The compliance report on investigations filed by the police authorities before the High Court in August 2011, suggests that in the year 1990-1993 “ITBP force was deployed for guard duty in JIC instead of CRPF”. One may add to this the role of officers such as DIG, CID, CIK Jaswant Singh, who according to the family, had knowledge of the whereabouts of the victim at some stage.

The role of the alleged perpetrator is based on unverified information that can only be clarified based on fair and thorough investigations.

Despite the passage of 22 years no progress appears to have taken place in the investigations.

The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the

CRPF between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Case No. 5

Victim Details

Malik Nissar Ahmad Shah [Enforced Disappearance]
Son of: Malik Ghulam Rasool Shah
Resident of: Verinag, Islamabad District

Alleged Perpetrators

1. Sub-Inspector [SI] Devi Dutt, 53rd Battalion Central Reserve Police Force [CRPF]

Case Information

On 20 July 1990 Malik Nissar Ahmad Shah was picked up by SI Devi Dutt of 53rd Battalion CRPF, handed over to the 19th Battalion CRPF, Bijbehara, tortured and has disappeared since.

First Information Report [FIR] no.112/1990 u/s 451 [House trespass] and 365 [Kidnapping/Abducting with intent to secretly and wrongfully confine] Ranbir Penal Code, 1989 [RPC] was filed at the Dooru Police Station on 22 November 1990. Information on the FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 15 October 2013. By communication dated 16 November 2013 from the Jammu and Kashmir Police a copy of the FIR was provided. The FIR relates to the beating and abduction of the victim by a sub-inspector of the 53rd Battalion of the CRPF. By communication dated 16 May 2014 from the Jammu and Kashmir Police information was provided that the investigation of the case stands closed as challaned and the case file along with all records and evidence both oral and documentary stands submitted to the court for judicial determination. Further information sought through RTI dated 14 November 2014. By communication dated 18 December 2014, from the Jammu and Kashmir Police, it was stated that as communicated by the Station House Officer, Police Station Dooru, all the records were gutted in a fire in 1994. This is clearly contradictory to the earlier position of the police.

The family of the Malik Nissar Ahmad Shah filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) no. 867/1991⁷].

The family of Malik Nissar Ahmad Shah filed

another petition before the High Court [habeas corpus petition, HC 535/1991]⁸. In response the Director General of Police [DGP], Jammu and Kashmir filed an affidavit stating that till date the whereabouts of Malik Nissar Ahmad could not be ascertained. The CRPF denied the arrest of the victim, and this was supported by an affidavit by the Station House Officer [SHO], Dooru Police Station. On 7 March 1995 the High Court ordered an enquiry which was conducted by the Sessions Judge, Islamabad. The petition was disposed off on 7 March 1995. The enquiry report was concluded on 3 October 2002. No objections were filed to the conclusions of the judicial enquiry. On 2 September 2003, the High Court ordered that a FIR be filed at the Verinag Police Station.

The enquiry report remains the only document on record for the purposes of analysis. But, prior to analyzing the enquiry report, a preliminary comment may be made on the rationale of the High Court disposing off the petition without waiting for the enquiry report. As per usual practice, the High Court should have awaited the submission of the enquiry report and then passed suitable directions. This is notwithstanding that the High Court subsequently did consider the judicial enquiry in its second disposal order of 2 September 2003. Further, it is unfortunate that a petition filed in 1991 reached conclusion only in 2003. Finally, it is particularly striking that despite the passage of 12 years the only relief the High Court could offer was the filing of a second FIR.

The enquiry judge issued notices to the respondents and the Public Prosecutor and the Chief Prosecuting Officer appeared on their behalf. According to the enquiry report, they filed objections and associated with the proceedings for a “pretty long period” during which time the petitioner produced and examined witnesses. On 1 February 1999 the Director General, CRPF and the Commandants of the 19th and 53rd Battalions were issued fresh notices to appear and file their statement of facts. Consequently, the Standing Counsel for the Union of India appeared, sought adjournments, but did not file any submissions. On 12 February 2002 no further opportunities were given. The Public Prosecutor, on behalf of Criminal Investigation Department [CID], Counter Insurgency Kashmir [CIK], Srinagar, on 15 May 2000, submitted that the victim had not been arrested by CIK. The petitioner and/or her counsel appeared before the enquiry only initially.

Unfortunately, one page of the enquiry report is not with the IPTK, but nonetheless, a summary of the relevant witness testimony is provided below:

- Ghulam Nabi Sheikh, stated that the victim was arrested from his shop, along with another

⁷ Information on the petition number was sought through RTI on 4 April 2014.

⁸ Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. Information was provided.

shopkeeper Nazir Ahmad Sofi. Nazir Ahmad Sofi was released subsequently but the victim was shifted to the Bijbehara camp and subsequently his whereabouts were not known. On cross-examination, the witness confirmed that the arrest was executed by SI Devi Dutt in his presence.

- A witness whose testimony begins on page 3 of the enquiry report [the missing page] but continues on page 4 states that Nazir Ahmad Sofi was released after six months but the victim was not. On cross-examination, the witness states that the arrest was executed by SI Devi Dutt.
- Malik Ghulam Rasool, the father of the victim, testified that at 9:00 am on 20.7.1990 the victim was arrested from his shop at Verinag by CRPF personnel and taken to the "Forces Camp". Afterwards, his whereabouts were not disclosed. In January 1998 two police personnel came to his residence and informed him that the victim was detained "in some jail". The witness was not informed of the specific jail at which the victim was detained. Despite efforts the witness could not find his son.
- Bashir Ahmad Shah, testified to the arrest of the victim at the Verinag market by CRPF personnel and his subsequent disappearance.

The enquiry notes that the petitioner [Aisha, the mother of the victim] also testified about the arrest of her son and even named the officer responsible. The enquiry report notes that the testimony of the witnesses was not damaged on cross-examination. The enquiry report therefore concludes in favour of the petitioner and confirms the arrest of the victim on 20 July 1990 by the 53rd Battalion of the CRPF in Verinag and that the whereabouts of the victim are unknown.

Therefore, the judicial process took 11 years to confirm the abduction and disappearance of the victim and indict the individual battalion without fixing specific culpability on SI Devi Dutt. Despite having evidence on record against SI Devi Dutt, the Sessions Judge, Islamabad, failed in fully discharging his duty on recording the entirety of the case. The delayed enquiry report apparently did not result in any further action or prosecution as this case finds no mention in the official documents related to cases sent by the Jammu and Kashmir Government for acquiring prosecution sanction under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA].

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

The conduct of the High Court with regard to the disposal of the case seven years before the conclusion of the judicial enquiry is an indicator of the non-application of the mind. Further, the weak relief finally ordered, of a second FIR to be filed, and the delayed manner in which the entire case was handled effectively provided for the institutional delay of justice which strengthens impunity. Finally, the 18 December 2014 Jammu and Kashmir Police position that the

document no longer exist is contradictory to the earlier position of the police that the documents were filed before a court and suggest that there may be an attempt to cover up the case.

Case No. 6

Victim Details

Mohammad Maqbool Bhat [Enforced Disappearance]
Son of: Habibullah Bhat
Resident of: Gangbough, Srinagar

Alleged Perpetrators

1. Central Reserve Police Force [CRPF] personnel at Hariniwas Interrogation Centre
2. Deputy Inspector General [DIG] Jaswant Singh, Central Reserve Police Force [CRPF]

Case Information

On 21 July 1990 Mohammad Maqbool Bhat was abducted by the CRPF personnel and his whereabouts are not known to date. The victim was arrested with a person named Naseer Ahmad Dar, who was subsequently released and confirmed the abduction of the victim.

A petition was filed before the High Court [habeas corpus petition, HCP 541/1990] seeking directions regarding the whereabouts of the victim. On 12 November 1996 a direction was given for a FIR to be filed u/s 364 [Kidnapping/Abducting to murder] and 365 [Kidnapping/Abducting with intent to secretly and wrongfully confine] Ranbir Penal Code, 1989 [RPC] to be investigated by the Deputy Inspector General [DIG] Kashmir, Srinagar and progress reports were to be submitted to the court. Further, an enquiry was ordered which was conducted by the District and Sessions Judge, Srinagar. On 27 July 2004, following the conclusion of the enquiry, the High Court directed the Station House Officer [SHO] of Batamaloo Police Station to register an FIR, and conduct investigations.

The judicial enquiry noted that the counsel for the respondents appeared on 18 June 1997. But, an order of the enquiry of 27 September 1997 shows that the counsel for the respondents did not acknowledge the summons subsequently and avoided the summons and asked some "B.S.F. man" to receive the summons. The petitioner produced witnesses, and the evidence is summarized below:

- Habibullah Bhat, the petitioner, stated that he was sitting in his compound on 21 July 1990 and five gypsies [vehicles] were boarded by CRPF personnel and his son was with them. They entered the cow shed but nothing was recovered from there. The CRPF personnel told the witness that the victim would be released soon. The witness also stated that he found the victim at Hariniwas Interrogation Centre in the custody of CRPF personnel and DIG Jaswant Singh

informed him that the victim would be let out soon. The witness went time and again to DIG Jaswant Singh who finally told him that the victim had been shifted to Jammu and “uptill now he does not know where Mohammad Maqbool is”. The witness was not cross-examined, although the counsel for respondents 1 to 3 was present [it is unclear who specifically these three respondents were].

- The testimonies of Ghulam Mohammad Dar, Abdul Rashid, Ali Mohammad Dar, Ghulam Mohammad Bhat and Abdullah Dar were summarized and confirmed the abduction.

Based on the above evidence the enquiry report found that there was an “irresistible presumption” that the victim was abducted by CRPF personnel on 21 July 1990.

A Letter Patent Appeal [LPA no. 121/1999] was also filed regarding the payment of compensation that was ordered in the same matter on 15 October 1998. The issue was whether the Government of Jammu and Kashmir Central Government were to make the payment. On 10 September 2001 the Government of Jammu and Kashmir was ordered to make the payment of Rs. 50,000.

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided. Information on petition numbers 541/1990 and 121/1999 was sought on 4 April 2014.

The judicial enquiry constituted by the High Court has not been very thorough as it only confirms the crime by the CRPF without fixing the responsibility on the actual perpetrators. Given the knowledge DIG Jaswant Singh had of the victim's custody it remains unclear why the judicial enquiry did not specifically indict him.

The police have failed in the instant case to perform their duty as they did not file the FIR on their own. Further, following the High Court order of 12 November 1996 no FIR was filed. The 27 July 2004 order of the High Court directing the police to once again file the FIR suggests the High Court was kept uninformed of any progress from 1996 onwards. This order that comes without strictures against the police only confirms the fears that the police and the armed forces contemptuously disregard institutions of justice in Jammu and Kashmir.

Based on the available official Government documents, this case does not find a mention in the list of cases sent for sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] thereby suggesting that

investigations, if any conducted, never reached the stage of prosecution in 22 years. Further, it appears that the Ministry of Home Affairs has taken no action in this case. The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir but no information was provided. Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Ironically, while the petition remains alive after 22 years, the petitioner has died waiting for the institutions of justice to deliver.

Case No. 7

Victim Details

Ali Mohammad Mir [Enforced Disappearance]
Son of: Saif-ullah Mir
Resident of: Dardpora, Kupwara District

Alleged Perpetrators

1. Inspector Suraj Singh / Surjit Singh [Operational name: Jagjit Singh], Intelligence Bureau [IB]
2. Personnel, 66th Battalion Border Security Force [BSF], Trehgam

Case Information

On 9 August 1990, Ali Mohammad Mir was picked up by the BSF at Kralapora Market, Kupwara and has disappeared since.

First Information Report [FIR] no.11/1992 u/s 302 [Murder] and 342 [Wrongfully confining person] Ranbir Penal Code, 1989 [RPC] was filed at the Trehgam Police Station⁹. The report that lists the contents of the FIR states that a BSF party, led by Inspector Suraj Singh of the IB abducted the victim. By communication dated 25 April 2014 from the Jammu and Kashmir Police a copy of the FIR and police communication was provided. By communication dated 10 December 2014 information was provided that the investigations were closed.

The family of Ali Mohammad Mir filed a petition before the High Court of Jammu and Kashmir which was disposed of by an order dated 27 July 1991 that ordered the release of Ali Mohammad Mir.

As Ali Mohammad Mir was not released, another petition was filed before the High Court [HCP

9 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. By communication dated 24 December 2013 from Jammu and Kashmir Police a report that lists the contents of the FIR was provided. Further information sought through RTI dated 14 November 2014.

197/1992]. This petition sought the release of Ali Mohammad Mir and an enquiry. The High Court ordered a judicial enquiry by the Chief Judicial Magistrate, Kupwara. The enquiry report was submitted on 28 October 1998 and confirmed the disappearance of Ali Mohammad Mir. The alleged perpetrator [alternatively referred to as Suraj Singh or Surjit Singh] was named by witnesses but a positive finding was not returned. In this petition an order was issued on 27 June 2000 for compensation of Rs. 1,00,000. Further, the High Court confirmed the disappearance of the victim by the personnel of the 66th Battalion BSF, Trehgam. A Letters Patent Appeal [LPA] [no.130/2000] was filed by the Union of India against the order on compensation¹⁰.

After confirming the disappearance of Ali Mohammad Mir by the 66th Battalion BSF, the High Court should have continued to monitor the investigations on the FIR. But, instead the High Court limited itself to the issue of compensation.

The approach of the High Court clearly resulted in a denial of justice as it appears no investigations or prosecutions have taken place. The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir. No information was provided.

The IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

Case No. 8

Victim Details

Javed Ahmad Ahanger [Enforced Disappearance]

Age: 17

Son of: Parveena Akhter

Resident of: Dhobi Mohalla, Batamalloo, Srinagar

Alleged Perpetrators

1. Deputy Commander [Major] S. N. Gupta, National Security Guards [NSG]
2. Assistant Commander [Captain] S.C. Katoch, National Security Guards [NSG] [Subsequently promoted as Deputy Commander]
3. Assistant Commander [Captain] Dinesh Sharma, National Security Guards [NSG] [Subsequently promoted as Deputy

Commander]

Case Information

On the intervening night of 17 and 18 August 1990, Javed Ahmad Ahanger was picked up from his uncle's house and has disappeared. But, according to the family of Javed Ahmad Ahanger, he was seen in the custody of the alleged perpetrators at the Hariniwas Interrogation Centre.

Between the date of the incident and the year 2004, the family of the victim filed four petitions before the High Court of Jammu and Kashmir. The first petition [habeas corpus petition, HCP 755/1990¹¹] was filed before the High Court by the family of the victim. First Information Report [FIR] no. 17/1991 was filed before the Shergeri Police Station¹².

The second petition [habeas corpus petition, Section 491-A Criminal Procedure Code, 1989 (CrPC) petition no. 64/1991¹³], along with the first, resulted in the court ordering an enquiry, on 3 October 1991, by the Additional District Judge, Srinagar, whose report was submitted before the High Court on 12 March 1992 and indicted the alleged perpetrators. In September, 1991, the Jammu and Kashmir Police submitted an affidavit before the High Court and denied the arrest of the victim. Further, the respondents filed objections to the judicial enquiry report. It was stated that no notice was received, and further, all allegations were denied.

On 26 August 1997 the High Court transferred the case to the Chief Judicial Magistrate, Srinagar to monitor the case. Sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] was denied by the Ministry of Home Affairs on 24 July 1996 but by another communication of 10 November 1999 the Ministry of Home Affairs indicated that a chargesheet could be filed before the competent court, following which sanction could once again be sought.

On 31 January 2003, the CJM, Srinagar confirmed that a chargesheet had been filed against the alleged perpetrators. The second petition was disposed off on 1 April 2003, following the enquiry conducted, based on information that a chargesheet had been filed in the court.

A third petition was filed by the family of the victim before the High Court against the denial of sanction by the Ministry of Home Affairs.

10 Information on the petition numbers was sought through RTI on 16 February 2012. No information was provided. Information was sought again on 4 April 2014.

11 Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. No information was provided. Information on this petition was sought again on 4 April 2014.

12 Information on this FIR was sought through RTI on 7 October 2011. A copy of the FIR and chargesheet was provided on 21 December 2011. Further, information was provided that the chargesheet had been filed before the CJM, Srinagar on 4.2.2003 against three NSG Officers namely Major S.N.Gupta, Major Dinesh Gupta, and Major S.C.Katoch.

13 Information on the petition number was sought through RTI on 2 July 2012. Information was provided.

The final petition [Original Writ Petition (OWP) 574/2004¹⁴] was filed before the High Court on the larger issue of disappearance, and sought information on disappeared persons in the Kashmir valley, including the victim. This petition was disposed off by the court on 15 December 2005 as a charge sheet had already been filed. It appears from the record that no final orders were filed on the larger issue of disappearances.

Based on the 10 November 1999 communication of the Ministry of Home Affairs, the Chief Judicial Magistrate [CJM], Srinagar issued non-bailable warrants against the alleged perpetrators in 2003.

This case is perhaps one of the oldest cases available on record involving violations of the armed forces in the valley. The record speaks for itself in terms of an incident of 1990 still being unresolved in 2012.

The enquiry report of the Additional District Judge, Srinagar, may now be considered on the facts of the instant case.

The judicial enquiry report first notes that despite receiving notices, the respondent-accused persons did not associate themselves with the proceedings. The enquiry judicial report then summarizes the numerous witnesses that testified. The relevant witnesses and testimonies are further summarized below:

- Witness Bashir Ahmad Dar, Superintendent of Police [SP] Control room, Srinagar testified that in September 1991 he was charged with allowing family members to meet with detainees in the lock-ups. He used to provide the official vehicle to the families for this purpose. The witness confirms that the parents of the victim were provided with an official vehicle, driven by Mohammad Yousuf Dar, Senior Grade Constable, on the orders of the Director General of Police [DGP], Jammu and Kashmir, to meet with the victim at the "army hospital".
- Witness Mohammad Yousuf Dar, Senior Grade Constable, testified that on 25 September 1990 he did take the family to the army hospital, Badami Bagh, but the victim could not be found.
- Witness Javaid Ahmad Ahanger, the victim's cousin, testified to the events of 17 and 18 August 1990 and testified to the arrest of the victim by security personnel from the witness's residence, after the security personnel had beaten him. Witness Ali Mohammad Ahanger, the victims' uncle, and a witness named Aftab Ahmad Baktu confirmed the same. Aftab Ahmad Baktu stated more specifically that the NSG were involved and the victim was taken to an

unknown destination in a gypsy.

- Witness Showkat Ahmad Khan testified that on the "intervening night of 17 and 18 August 1990 he found the alleged detainee Javaid Ahmad Ahanger who he already knew in the custody of the NSG near the gate of Oberio Palace which opens for Hariniwas. He was being beaten and at that time he found the alleged detainee Javaid Ahmad Ahanger in the custody of SP Kotoch, SP Dinesh and SP Gupta all from the National Security Guards". The witness stated that, on being asked, he informed the three officers that the victim was an innocent person. Thereafter, the witness testified that the victim was taken away by the NSG personnel. On the following day the NSG personnel told the witness that the victim had been released.
- Witness Parveena Akhter, the mother of the victim, while confirming the details of the arrest of the victim [based on hearsay], also stated that Thakur Jaswant Singh, Deputy Inspector General [DIG], Criminal Investigation Department [CID] of Jammu and Kashmir Police, "informed her that her son had received an injury and as such he was admitted in Military Hospital Badami-Bagh and within two or three days he will be released". When her son was not released, she approached the DGP, Jammu and Kashmir who told her that her son was in the army hospital and provided her with a vehicle through the SP Control Room, Srinagar to visit her son. But, she did not find her son at the hospital. The witness then testified to meeting with both the DGP, Kashmir and Thakur Jaswant Singh, DIG CID again, and once again received similar responses.

Based on a reading of the above testimony, witnesses Javaid Ahmad Ahanger and Ali Mohammad Ahanger, Aftab Ahmad Baktu confirm the victims arrest on the night of 17 and 18 August 1990. Javaid Ahmad Ahanger and Ali Mohammad Ahanger refer to the "security personnel" as being the ones who executed the arrest, whereas Aftab Ahmad Baktu specifically refers to the NSG. Next, witness Showkat Ahmad Khan provides the crucial link to the three alleged perpetrators [notwithstanding that he refers to them all as "SP" and there are mis-spellings of their names in the enquiry report attributed to the witness]. Witnesses Bashir Ahmad Dar and Mohammad Yousuf Dar are witnesses to the effect that on 25 September 1990 the DGP, Jammu and Kashmir appeared to believe that the victim was in the army hospital, Badami Bagh. Notwithstanding that the victim was not in fact found, this testimony does point to the knowledge of the police that the victim was in the custody of the army. The testimony of witness Bashir Ahmad Dar refers to the year "1991" but on a reading of Mohammad Yousuf Dar's testimony, this could

14 Information on the petition number was sought through RTI on 16 February 2012. Information was provided.

either be a typographical error or an innocent mistake on the part of Bashir Ahmad Dar. The original transcript of his testimony would need to be consulted. Finally, witness Parveena Akhter provides crucial evidence that corroborates the evidence of witnesses Bashir Ahmad Dar and Mohammad Yousuf Dar with regard to the visit to the army hospital Badami-Bagh. Crucially, her testimony has the potential to also indict the DGP, Kashmir and Thakur Jaswant Singh, DIG CID for their potential role in a cover-up, and perhaps more pertinently, their role as accomplices.

The enquiry report therefore confirms that the victim was arrested on the intervening night of 17 and 18 August 1990 and has since disappeared in the custody of the three alleged perpetrators in question. Interestingly, in the summary of conclusions, the enquiry report states Aftab Ahmad Baktu's evidence to be that of an eye-witness as he too was in the custody of the NSG. While this is not the impression given in the summary of the testimony, one must assume this to be the position. The enquiry report relies greatly on the testimony of Showkat Ahmad Khan who testified to seeing the victim outside the Hariniwas Interrogation Centre by the three alleged perpetrators.

The enquiry report also adds that the witness testified that the victim was then taken away to "Hari Mahal". The enquiry report also considers the question of whether the victim may have subsequently been released, as claimed by NSG personnel to Showkat Ahmad Khan. The enquiry report concludes that this does not appear to be the case based largely on the evidence of Parveena Akhter. The enquiry report is also particularly critical of the DGP, Jammu and Kashmir for not ensuring speedy and adequate investigations in the case.

To conclude, it might be appropriate, in a case such as this, to mention that the enquiry report ends by suggesting that the "authorities in this part of the country are playing" the game of holocaust.

No reasons are on record for the decline of sanction for prosecution. Despite the passage of 22 years there appears to have been no progress on the investigations, particularly as following the denial of sanction the Jammu and Kashmir Police do not appear to have taken any action in terms of filing a fresh and improved chargesheet. This has assisted in allowing the perpetrators to evade justice.

Case No. 9

Victim Details

Abdul Rashid Lone [Torture and Enforced Disappearance]

Age: 18

Occupation: 8th Standard student / Carpet business / Farming

Son of: Mohammad Sultan Lone

Resident of: Lone Mohalla, Thinduma, Kreeri, Baramulla District

Alleged Perpetrators

1. Kripal Singh, 50th Battalion, Central Reserve Police Force [CRPF], Camp Zangam, Pattan

Case Information

On 23 August 1990, Abdul Rashid Lone went to his friend, Bitu son of Afzal Bakshi's house in Izzar village. On the next morning, 24 August 1990, CRPF and army cordoned off the area. During the identification parade, Kripal Singh picked up Abdul Rashid Lone and took him to the CRPF camp at Zangam. Abdul Rashid Lone was seen by his maternal cousin namely Ghulam Rasool Lone, son of Wali Lone, resident of Lone Mohalla, Thinduma, when he went to collect his motor bike which had been seized by the CRPF. He was standing in the compound of the camp when the soldiers took Abdul Rashid Lone out to make him drink some water. The eye-witness states that Abdul Rashid Lone was only wearing shorts. His hands were tied. A day after Abdul Rashid Lone was picked up he was brought to the village for a search operation. The family states that his toe was bleeding and that he was walking unsteadily. The eye-witnesses saw the Kripal Singh with Abdul Rashid Lone. Abdul Rashid Lone was then taken back.

For the next three months, the family of Abdul Rashid Lone visited Zangam Camp and asked for his whereabouts.

After three months, the family filed a report with the Kreeri Police Post and later in Baramulla Police Station. They also filed a petition in the High Court.

The family visited many jails across India including Kotbalwal Jail, Rajasthan and Hiranagar and many other detention centres but could not find Abdul Rashid Lone.

The family of Abdul Rashid Lone gave a statement to the IPTK on 6 March 2012.

First Information Report [FIR] no. 238/1997 u/s 346 [Wrongful confinement in secret] Ranbir Penal Code, 1989 [RPC] was filed at the Baramulla Police Station as a result of a petition filed by the family of Abdul Rashid Lone before the High Court of Jammu and Kashmir.

The judicial enquiry conducted by the High Court confirmed the abduction of Abdul Rashid Lone by the CRPF of Zangam Camp. Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 22 May 2012 from the Jammu and Kashmir Police information was provided that the investigations in the case were ongoing.

The State Human Rights Commission [SHRC] was approached and issued its final decision on 26 April 2001. Ex-gratia government relief of Rs. 1,00,000 and

compassionate employment under SRO-43 [Statutory Rules and Orders] were recommended. The family of the victim received both these benefits.

The Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecutions, under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] stated on 6 September 2011 in relation to this case that sanction was sought on 24 November 2007 from the Ministry of Home Affairs. RTI was filed to the Home Department, Government of Jammu and Kashmir, on 7 May 2014 for information on cases against the CRPF where sanction for prosecution was sought. By communication dated 26 March 2015, PIO, PHQ, Jammu and Kashmir, in its reply stated that the case was still under investigation.

The document on record that may be considered for the purposes of analysis is the 26 April 2001 SHRC decision.

A report was received from the Police Headquarters which stated that during investigations it was confirmed that the alleged perpetrator was responsible for the abduction of the victim. It was also stated that sanction for prosecution under AFSPA was being sought. Based on this report, the SHRC found that it was clearly established that Kripal Singh was responsible for the disappearance of Abdul Rashid Lone.

While the indictment of Kripal Singh appears clear from the police report, the prosecution sanction process raises some worrying questions. As of 2001, it appears that the investigations were completed and sanction sought. But, from other documentation referred to above, it appears that the request for prosecution sanction was only sought in 2007, six years later. Further, as of 2012, it appears no prosecution sanction was given and the investigations seem to be ongoing [perhaps a reference to the fact that a final decision has yet to be taken]. The report of the police in 2001 before the SHRC was therefore a false statement.

Further, the Government of Jammu and Kashmir took seventeen years [1990 to 2007] to seek sanction in this case which in itself perpetuates impunity.

Significantly, it took the police seven years to file a FIR in the case, and that too only after the intervention of the High Court. This case serves as an example of how the mechanisms for the protection of human rights have been rendered useless in Jammu and Kashmir. Finally, it appears the Ministry of Home Affairs has taken no action in the matter.

The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the CRPF between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Further, the IPTK sought information on 10 January

2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Case No. 10

Victim Details

Tariq Ahmed Lone [Torture and Enforced Disappearance]
Age: 35
Occupation: Fruit Business
Son of: Muhammad Ghulam Nabi Lone [deceased]
Resident of: Wanigam, Bala, Pattan, Baramulla District

Alleged Perpetrators

1. Commandant Kripal Singh, Central Reserve Police Force [CRPF], Camp Zangam

Case Information

The family of Tariq Ahmed Lone states that on 9 September 1990, at about 6:00 am, a group of CRPF personnel led by Commandant Kripal Singh entered the house of Tariq Ahmed Lone. They caught hold of Tariq Ahmed Lone as he was the only male member in the family present then. He was taken outside the house and near the village mosque. The CRPF personnel started to beat him up severely.

For almost one or two hours he was tortured severely as per the eye-witnesses present. The CRPF was asking Tariq Ahmed Lone to hand them the weapons of one Prince Khan, a relative of the victim. As per the family of Tariq Ahmed Lone, he fell unconscious at the place. He was dragged and then taken away in the army vehicle. He was taken to the Zangam Camp.

On the same morning, one Pir Muhammd Shafi of Sherabad Pattan was also abducted by Commandant Kripal Singh.

On the following day the CRPF personnel informed the family of Tariq Ahmed Lone that he had been taken to another camp.

The family of Tariq Ahmed Lone went to the Zangam Camp for the next one month to ask for the victim's release, but the army personnel did not give any details on the whereabouts of Tariq Ahmed Lone.

Later the family filed an FIR at the Pattan Police Station.

The family states that because of the fear of the army, they could not file any case in the court.

The family was given Rs. 1,00,000 ex-gratia government relief but no compassionate employment under SRO-43 [Statutory Rules and Orders].

The family of Tariq Ahmed Lone gave a statement to the IPTK on 6 March 2012.

Despite the passage of 22 years, no information exists on record on the status of investigations or prosecutions conducted by the Jammu and Kashmir Police.

Further, the state of absolute impunity is clear as the IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the CRPF between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

Case No. 11

Victim Details

Khursheed Ahmad Bhat [Torture and Enforced Disappearance]

Age: 29

Occupation: Shopkeeper

Son of: Wali Mohammad Bhat, Fatima Begum

Resident of: New Colony, Sopore, Baramulla District

Alleged Perpetrators

1. Commandant Kripal Singh, 50th Battalion, Central Reserve Police Force [CRPF], Camp Jagger and Fruit Mandi Headquarters, Sopore, Baramulla District
2. Deputy Superintendent of Police [DSP] Manmohan Sharma [Operational name: Moni Singh], 50th Battalion, Central Reserve Police Force [CRPF], Camp Jagger and Fruit Mandi Headquarters, Sopore, Baramulla District
3. Deputy Superintendent of Police [DSP] Lakha Singh, 50th Battalion, Central Reserve Police Force [CRPF], Camp Jagger and Fruit Mandi Headquarters, Sopore, Baramulla District
4. Constable Gabbar Singh, 50th Battalion, Central Reserve Police Force [CRPF], Camp Jagger and Fruit Mandi Headquarters, Sopore, Baramulla District

Assistant Sub-Inspector [ASI] Ram Chandre

[Operational name: Chaha]¹⁵,

1. 50th Battalion, Central Reserve Police Force [CRPF], Camp Jagger and Fruit Mandi Headquarters, Sopore, Baramulla District

Case Information

The family of Khursheed Ahmad Bhat states that the victim was picked up by the 50th Battalion CRPF on 25 September 1990 at about 10:30 am from his shop. The CRPF was led by DSP Manmohan Sharma and DSP Lakha Singh. The family states that the victim was first taken to the 50th Battalion CRPF Headquarters at Fruit Mandi, Sopore and then to the Jageer Camp interrogation centre where he was tortured by ASI Ram Chandre, the head of the interrogation centre. Information regarding the shifting of the victim to Jageer Camp and then his torture was provided to the family by other persons. The family also believes that Commandant Kripal Singh and Constable Gabbar Singh were responsible for the torture of the victim. Despite various efforts by the family to trace the victim, he has disappeared.

The family of Khursheed Ahmad Bhat gave a statement to the IPTK on 24 December 2012.

First Information Report [FIR] no. 258/1990 u/s 345 [Wrongful confinement knowing that writ has been issued for his liberation], 365 [Kidnapping/Abducting with intent to secretly and wrongfully confine] Ranbir Penal Code, 1989 [RPC] was filed at the Sopore Police Station¹⁶. The 9 May 2012 communication from the Jammu and Kashmir provided information that the case was closed by declaring the perpetrators as untraced. By communication dated 9 January 2014 it was stated that the case was closed on 6 November 2003. By further communication dated 9 July 2012, a document was provided that states that sanction for prosecution was declined under Section 197 (2) [Prosecution of Judge and Civil servants] Criminal Procedure Code, 1989 (CrPC) by the Ministry of Home Affairs on 6 August 2002.

The family of the victim also filed a petition before the High Court of Jammu and Kashmir.

Deputy Commissioner, Baramulla, provided ex-gratia government relief of Rs. 1,00,000 to the family of the victim.

On 27 October 2011, the State Human Rights Commission [SHRC], having taken suo moto cognizance of the case, recommended that the sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] be accorded, and compassionate employment under SRO-43 [Statutory Rules and Orders] be provided to the family of the victim.

The family of the victim has not received the compassionate employment under SRO-43. Further, while the SHRC in its decision noted that sanction for

15 The names of the alleged perpetrators are spelt as per the SHRC decision of 27 October 2011. The family of the victim, while mentioning the same names, and titles, provides slightly different spellings of the names.

16 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 9 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. By communication dated 9 January 2014 a copy of the FIR was once again provided. Further information sought through RTI dated 14 November 2014.

prosecution under AFSPA had been sought from “higher authorities” on 3 November 1995, the Ministry of Defence, in its affidavit before the High Court in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that it had not received the request for sanction in this case.

The only document on record for the purposes of analysis is the decision of the SHRC on 27 October 2011. The SHRC begins by stating that despite being approached, over four years, the Director General of Police [DGP], Jammu and Kashmir, did not submit a factual report before the SHRC. The SHRC relied in its decision on the testimony of the family of the victim and the report of the Station House Officer [SHO], Sopore Police Station, filed before the High Court. This report states, based on investigations that involved statements of witnesses, that DSP Manmohan Sharma and DSP Lakha Singh forcibly entered into the shop of the victim and took him to the Fruit Mandi Camp, Sopore. Further, the report also states, based on witnesses that were kept in custody with the victim, that the victim was beaten and tortured by the other alleged perpetrators. The victim was beaten and tortured in the presence of the witnesses. He was then dragged to another room in a critical condition where he was further beaten and tortured. The police report then concludes that the victim had died in custody.

Based on this report, the SHRC concludes “beyond any doubt” that the victim had been arrested and tortured by the five alleged perpetrators. The SHRC states that “this is a proved and clear case of custodial disappearance”. The SHRC is then critical that sanction for prosecution had not been granted even after the lapse of 16 years.

The indictment of the SHRC, based on the police report, is unequivocal. But, it is unfortunate that no action appears to have been taken against the alleged perpetrators.

First, it is unclear why the sanction was sought from the Ministry of Defence as the personnel implicated in the case fall under the Ministry of Home Affairs. It is further unclear why the Ministry of Defence did not clarify that the case did not pertain to them.

Second, the police response in the RTI suggests that the case was closed by declaring the perpetrators as untraced. Further, and as a concluding remark that perhaps displays the unfortunate state of the present case, the death certificate issued in this case by the Baramulla District Administration may be considered. While presuming the death of the victim on 4 November 1990, the death certificate lists the cause of death as “subversion” which might suggest certain criminality on the part of the victim.

The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the CRPF between 1990 and 2011 in Jammu and

Kashmir but no information was provided. Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Based on the non-cooperation of Government of India [Ministry of Home Affairs], CRPF and the non-submission of the report by the DGP, Jammu and Kashmir, to the SHRC, and the information provided by the police that the case has been closed as untraced, suggests an institutional cover up and protection from prosecution for the alleged perpetrators

Case No. 12

Victim Details

1. Abdul Rashid Sheikh [Torture and Enforced Disappearance]
Age: 30
Occupation: Carpet Business
Son of: Abdul Khaliq Sheikh
Spouse: Zubeida
Resident of: Kripalgarh, Pattan, Baramulla District
2. Ghulam Mohammad Sheikh [Abduction, Wrongful Confinement and Torture]
Resident of: Kripalgarh, Pattan, Baramulla District
3. Bashir Ahmad Sheikh [Abduction, Wrongful Confinement and Torture]
Resident of: Kripalgarh, Pattan, Baramulla District
4. Ghulam Mohammad Rather [Abduction, Wrongful Confinement and Torture]
Occupation: Veterinary Doctor
Resident of: Kripalgarh, Pattan, Baramulla District

Alleged Perpetrators

1. Commandant Sharma, 24th Battalion Border Security Force [BSF], Camp Wodoora, Sopore

Case Information

On 25 November 1990 there was crackdown in the Singhpora area. During the crackdown there were some gunshots in the Matipora area. Further, the crackdown was being extended to the Kripalgarh area as well so people tried to escape from their houses. Abdul Rashid Sheikh was not able to and he returned home. The BSF personnel of the 24th Battalion led by Commanding Officer Sharma came to the house of the Abdul Rashid Sheikh and arrested him along with Rs.1,00,000 that he had from his business. Two relatives of Abdul Rashid Sheikh: Ghulam Mohammad Sheikh and Bashir Ahmad Sheikh, along with a veterinary doctor Ghulam Mohammad Rather,

were also arrested. Ghulam Mohammad Rather was released three days after his arrest. Ghulam Mohammad Sheikh and Bashir Ahmad Sheikh were released 31 days after their arrest. According to Ghulam Mohammad Sheikh and Bashir Ahmad Sheikh, Abdul Rashid Sheikh was detained with them for three days after the arrest at the Wodoora Camp. They were all tortured but Abdul Rashid Sheikh was tortured more severely as he had a long beard.

On 28 November 1990 morning, Abdul Rashid Sheikh was taken out of the camp and a few hours later the BSF personnel who had taken him returned only with his pheran, which was then given to a militant. They claimed he had been released.

During this period, the family of Abdul Rashid Sheikh approached Deputy Inspector General [DIG] Chappra of the BSF camped at Baramulla and sought his assistance. Initially the DIG refused to acknowledge that Abdul Rashid Sheikh had been arrested but after four days he accepted that he had been detained along with the others at the Wodoora Camp. While he stated he would assist in the release of all the persons detained, Abdul Rashid Sheikh was never released.

On 25 November 1990 the family of Abdul Rashid Sheikh went to the Pattan Police Station Pattan and filed a FIR. But, subsequently, the Police Station refused to accept that the FIR had been filed. But, four years later, using influence, the FIR was filed.

The family of Abdul Rashid Sheikh received ex-gratia government relief of Rs. 1,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders].

The family of Abdul Rashid Sheikh gave a statement to the IPTK on 13 February 2012.

The family of Abdul Rashid Sheikh filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, Section 491 Criminal Procedure Code, 1989 (CrPC) no.515/1991]¹⁷. The Superintendent of Police [SP], Criminal Investigations Department [CID], Counter-Intelligence Kashmir [CIK], Srinagar filed a report wherein it was stated that Abdul Rashid Sheikh was not received in any Joint Interrogation Centre nor had he been arrested. A judicial enquiry was ordered on 24 May 1994 and it was stated that if the enquiry judge came to the conclusion that the victim had been killed during custody he would get a case registered with the concerned police station and the culprits would be tried in a court.

The judicial enquiry was conducted by the District and Sessions Judge, Baramulla and was concluded on 20 February 2003.

The enquiry report begins by stating that while the

order for an enquiry was given on 24 May 1994, it was received by the enquiry court on 24 October 2000. Further, that in the petition filed in the High Court it was alleged that Abdul Rashid Sheikh was arrested along with Ghulam Muhammad Sheikh and Bashir Ahmad Sheikh. These two persons were released on 25 December 1990. The report also noted that it is alleged that the DIG, BSF, Baramulla permitted the father of the victim to meet with Abdul Rashid Sheikh on 29 November 1990 but he was not allowed to meet him.

During the proceedings, the Public Prosecutor opted not to submit any statement of facts. Advocate Karnail Singh submitted a parawise reply for one respondent [it is unclear who the respondent was]. The allegations were denied.

The father of Abdul Rashid Sheikh testified in addition to two other witnesses.

- Abdul Khaliq Sheikh, father of the victim, stated that during a crackdown in his locality by the BSF Abdul Rashid Sheikh was arrested. Abdul Rashid Sheikh was neither a militant nor did he work as a counter-insurgent. On cross-examination, he stated that he was unable to distinguish between the BSF and Central Reserve Police Force [CRPF] personnel and therefore cannot say which branch of the armed forces abducted his son.
- Ghulam Mohammad Sheikh, a neighbor of the victim, confirmed that Abdul Rashid Sheikh was arrested and not released.
- Ghulam Mohammad Rather, stated that he was arrested along with Abdul Rashid Sheikh. The witness was released after two days but Abdul Rashid Sheikh was not.

The enquiry concluded by confirming the abduction of the victim, stated that "it leads to the only conclusion that Abdul Rashid Sheikh has been eliminated in the custody by that branch of the Security Forces which had taken him in custody". But, the identity of the armed forces could not be established.

There exist only two areas of contradiction between the statement provided by the family of the Abdul Rashid Sheikh [specifically, his brother] to the IPTK and the judicial enquiry:

- In the statement it is stated that Ghulam Mohammad Rather was released in three days but in the enquiry he states two days.
- In the statement the alleged perpetrator is specifically named. In the enquiry no names are provided.

The Jammu and Kashmir Police took four years to file a FIR in this case, and that too only after the use of influence.

¹⁷ Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided. Information on this petition was sought again on 4 April 2014.

Further, no information exists on record on the state of investigations or prosecutions over the last 18 years following the filing of the FIR.

The Ministry of Defence seems to have cared very little about the High Court judicial enquiry order, the Jammu and Kashmir Police investigations or in instituting a process for delivering justice.

The available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 13

Victim Details

Abdul Rashid Malik [Enforced Disappearance]
Occupation: Employee at Social Forestry Department
Son of: Abdul Gani Malik
Resident of: Trehgam, Kupwara District

Alleged Perpetrators

1. Inspector B.D. Gupta, 66th Battalion Border Security Force [BSF], Camped at Trehgam
- Sub-Inspector [SI] Hanuman Singh¹⁸,
1. 66th Battalion Border Security Force [BSF], Camped at Trehgam

Case Information

On 19 December 1990, Mohammad Maqbool Lone, son of Aziz Lone, came to the house of Abdul Rashid Malik along with Inspector B.D.Gupta and Sub-Inspector Hanuman Singh and called the victim out of the house. Abdul Rashid Malik had Rs.3000 on him. The victim has disappeared since.

The father of Abdul Rashid Malik sought to find the whereabouts of his son. In 1991, the District Magistrate, Kupwara wrote a letter to the Commanding Officer of the 66th Battalion BSF with directions that the whereabouts of Abdul Rashid Malik be provided to his father.

FIR no.36/1992 u/s 302 [Murder], 201 Ranbir Penal Code, 1989 [RPC] was filed at the Trehgam Police Station on 13 April 1992 by the father of Abdul Rashid Malik¹⁹. The 6 January 2012 communication from the Jammu and Kashmir Police states that the investigation was closed as chargesheeted, sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] was sought but declined. By further communication dated 9 July 2012 from the Jammu and Kashmir Police a copy of the final report in the case dated 17 August 2008 was provided. The final report states that Abdul Rashid Malik was called

through Mohammad Maqbool Lone to the 66th Battalion BSF Camp, Trehgam. Abdul Rashid Malik was carrying Rs. 3000 with him. B.D.Gupta and Hanuman Singh of the 66th Battalion BSF had asked for him. Abdul Rashid Malik was subsequently killed but the body was not found. The investigations were unable to get cooperation from the BSF and due to lack of necessary information the accused could not be traced.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction for prosecution was declined by the Ministry of Home Affairs on 20 June 2007.

It is noteworthy that it took the Jammu and Kashmir Police, Government of Jammu and Kashmir and the Ministry of Home Affairs 17 years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

Further, the Jammu and Kashmir Police inexplicably closed the case by declaring the perpetrators as untraced following the decline of sanction for prosecution under AFSPA instead of further agitating the matter. It also needs to be ascertained on what basis the Jammu and Kashmir Police concluded that Abdul Rashid Malik was killed as the body was not found and no evidence has been brought forward on record.

The IPTK sought information on 10 January 2012 on all inquiries and court-martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir. No information was provided.

Case No. 14

Victim Details

Farooq Ahmad Bhat [Enforced Disappearance]
Age: 15
Occupation: Student/Shopkeeper
Son of: Abdul Ahad Bhat
Resident of: Wazabagh, Hyderpora, Srinagar

Alleged Perpetrators

1. Major [Deputy Commandant] Chawan, 102nd Battalion, Border Security Force [BSF]
2. Inspector Prem Nath Dogra, 102nd Battalion, Border Security Force [BSF]

Case Information

18 The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], on 6 September 2011 referred to the alleged perpetrator as "Nanoman Singh".

19 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 6 January 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

On 22 June 1991, at about 6:00 pm, Farooq Ahmad Bhat was picked up by the alleged perpetrators while he was assisting his father at their shop. Prior to this, on the same day an incident of cross-firing between the BSF and militants took place.

The father of the victim approached the Budgam and Saddle Police Stations but both Station House Officer's [SHO] of the Police Stations refused to file a FIR. The father of the victim also wrote a letter to the Senior Superintendent of Police [SSP], Budgam and Srinagar, seeking that a case be registered.

The family also approached the BSF camp on the following day, were assured of the release of the victim, but no action was subsequently taken. The father of the victim states that on the day he visited the BSF camp he was asked to pay a sum of Rs. 50,000 for the release of his son but he refused to do so as his son was never involved in any militancy related activity. The father of the victim claims to have made various efforts to find his son, and estimates his expenditure in searching for his son as being enormous.

The family of the victim gave a statement to the IPTK on 26 November 2011.

First Information Report [FIR] no. 17/1991 was filed at the Saddle Police Station regarding the cross-firing that took place before the victim was arrested²⁰. By communication dated 30 November 2013 from the Jammu and Kashmir Police it was stated that the record was not traceable. But, by communication dated 22 April 2014 from the Jammu and Kashmir Police a copy of the FIR and chargesheet were provided. Further, information was provided that the case stands chargesheeted before a court. But, the FIR, filed on 22 January 1991, places the incident on 2 October 1988.

The family of the victim filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, Section 491 Criminal Procedure Code, 1989 (CrPC) petition no. HCP 691/1991]²¹. On 20 August 1993, based on a submission by the Superintendent of Police [SP], Criminal Investigation Department [CID], Counter Insurgency Kashmir [CIK] that stated that the victim was not in their possession, the High Court dismissed the petition. A Letters Patent Appeal [LPA] was subsequently filed by the family based on two contentions: that when the earlier petition was dismissed it was wrongly recorded that the applicant was present, when in fact he was not present, and therefore not heard, and that the petition should not have been dismissed as contradictory stands were taken by the respondents [which included the BSF].

A complaint was instituted before the State Human Rights Commission [SHRC] on 28 February 1998 [a supplementary petition was filed on 20 August 1998] and a decision was delivered on 29 September 1999 where ex-gratia government relief of 1,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders] were recommended. The family of the victim received the benefits.

Another complaint was filed before the SHRC on 16 November 2006, and decided on the same day, to allow the father of the victim access to Tihar Jail, New Delhi to find the victim, New where he believed his son to be. The father, on searching Tihar Jail, was unable to find his son.

In 2011, the family of the victim filed another petition before the SHRC seeking investigations on the unknown, unmarked graves in the State and DNA testing to identify the bodies buried, to ascertain whether the victim has been buried in these graves.

Before analyzing the instant case, it would be important to note that despite the various efforts of the family of the victim, no case was registered.

The SHRC decision of 29 September 1999 is presently one of two documents on record that may be considered. The father of the victim specifically named the alleged perpetrators as being responsible for the abduction and disappearance of the victim. The SHRC sought reports from the Inspector General of Police [IGP], Kashmir, Director General of Police [DGP], Jammu and Kashmir and the Inspector General [IG], BSF. All three denied that the victim had been picked up and detained by the 102nd Battalion BSF. The SHRC concluded firstly that "there is enough material to say that the son of the complainant was lifted by the said security force. The simple denial on the part of the BSF cannot be taken as gospel truth in the face of the materials placed by the complainant on the file." The SHRC also considered the testimony of the neighbours of the victim's father, namely: Abdul Ahad Bhat, Ghulam Ahmad Dar and Mohammad Sultan Dar, that the victim was picked up by the 102nd Battalion BSF on 22 June 1991 at 6:00 pm from his shop and that since then his whereabouts are unknown. The SHRC also considered a FIR that records the incident relating to the cross-firing between the BSF and militants and stated that: "it is not uncommon that the Security Forces in the retaliation of an incident do cordon the nearby areas of the incident and pick up some people (usually youth) for interrogation. In this process sometimes some people do not return home at all. This may be one of such unfortunate cases". Finally, the SHRC considered the actions of the victim's father in searching for the victim at various places as adding credibility to his testimony regarding

20 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

21 Information on the petition number mentioned above was sought through RTI on 16 February 2012. No information was provided. Information on this petition was sought again on 4 April 2014.

the disappearance of his son. The SHRC also considered the issue of the specific battalion and names of officers concerned in the arrest being named by the victim's family and the neighbours. The SHRC stated that: "it could be said as to how the complainant was knowing the officers and the unit named by him. The complainant in his complaint at Para no. 13 clearly states that the BSF Personnel of the same battalion were usually purchasing various articles from his shop through him and his son. As such this objection stands explained". The SHRC therefore concluded that the victim was arrested and then "eliminated" and "died in the custody of the BSF". The SHRC then recommended ex-gratia government relief of 1,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders]. The SHRC also found that it was the SHO of Police Station Saddar and not Budgam who should have filed a FIR when approached, but as the concerned SHO had since deceased, no further action could be taken.

The SHRC decision therefore clearly implicates the 102nd Battalion BSF and also throws light on a pattern of disappearances in the state. But, what is an unfortunate feature of the decision is that it does not specifically indict the two officers of the battalion: "Mr. Chuwan" [a misspelling by the SHRC] and Prem Nath Dogra. This notwithstanding the analysis that the SHRC entered into while testing the basis on which the complainant [and it appears the neighbours as well] could have named these officers specifically. Further, the SHRC should have recommended that a case be registered against the alleged perpetrators.

The other document on record for analysis is a letter sent to the Deputy Commissioner, Budgam, from the Senior Superintendent of Police [SSP], Srinagar, dated 7 August 2000 which confirms that the victim was lifted by the 102nd Battalion BSF on 22 June 1991. This letter also confirms that the victim was not involved in any subversive activities.

Despite the passage of 21 years no progress appears to have taken place in the investigations. The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir but no information was provided. Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Case No. 15

Victim Details

Abdul Khaliq Mir (Shah/Peer) [Enforced Disappearance]

Age: 39

Occupation: Imam, Village Mosque

Son of: Mohammad Syed Shah/Peer

Spouse: Mehmooda

Resident of: Garoora, Bandipora District

Alleged Perpetrators

1. Deputy Superintendent of Police [DSP] Neigi [also referred to as "Nagee" or "Naygi"], 50th Battalion Central Reserve Police Force [CRPF], Camped at Onagam, Bandipora

Case Information

On 2 September 1991, Abdul Khaliq Mir was picked up by personnel of the 50th Battalion CRPF, operating under the command of DSP Neigi.

First Information Report [FIR] no. 62/2002 was filed at the Bandipora Police Station u/s 346 [Wrongful confinement in secret] Ranbir Penal Code, 1989 [RPC] against the CRPF personnel.²² This was following a State Human Rights Commission [SHRC] direction dated 14 February 2002.

A report on this FIR was submitted by the Police Station to the judicial enquiry conducted on the orders of the High Court of Jammu and Kashmir where it was stated that there had been no progress in the investigations as the 50th Battalion CRPF was posted outside the State even though a unit of the same was posted at Bandipora in 1990. Further, police communications are on record, such as a 20 November 2009 letter from the Station House Officer [SHO], Bandipora Police Station to the DSP, Headquarters, Bandipora, seeking the intervention of authorities to ascertain the current position of the 50th Battalion CRPF and the alleged perpetrator. Another letter from the SHO, Bandipora Police Station, dated 25 April 2006 to the Sub-Divisional Police Officer [SDPO], Bandipora, complains of the lack of cooperation of the CRPF in ensuring the presence of the 50th Battalion CRPF and the alleged perpetrator for investigations. Also on record is a letter from the Senior Superintendent of Police [SSP], Baramulla to the Inspector General of the CRPF, dated 13 August 2004, seeking the presence of the alleged perpetrator for questioning before the Bandipora Police Station.

The family of Abdul Khaliq Mir filed a petition before the High Court [habeas corpus petition, Section 491 Criminal Procedure Code, 1989 (CrPC) no. 93/1997]²³. On 6 April 1999 the matter was referred for a judicial enquiry, which was conducted by the Sessions Judge, Baramulla, and concluded on 20 January 2003. The petition was disposed off on 20 July 2004 with a direction for the investigations in the case to be expedited.

²³ Information on the petition number was sought through RTI on 2 July 2012. No information was provided. Information on this petition was sought again on 4 April 2014.

The judicial enquiry report states that the respondents appeared before the enquiry judge. A statement of facts was submitted by respondents 6 and 7 [presumably the Union of India and the CRPF]. The allegations were denied. Further, it was stated that the alleged perpetrator was posted as the Commandant of the CRPF personnel in Bandipora in 1991 but was relieved from Bandipora on 3 July 1991.

The following is a summary of the relevant evidence of the petitioner and his witnesses before the enquiry judge:

- Ghulam Mohammad Shah, stated that Abdul Khaliq Mir was picked up from his in-laws house at Onagam, Bandipora by the armed forces. He could not say which branch of the armed forces had arrested him.
- Abdul Salam Shah, testified that personnel of the 50th Battalion CRPF picked up Abdul Khaliq Mir on 2 September 1991. Abdul Khaliq Mir had not returned home to date. On cross-examination, the witness stated that he came to know that it was the personnel of the 50th Battalion CRPF who had arrested the victim, “during the search”. There were a group of 40 personnel involved in the arrest. They came in two small and one heavy vehicle. Despite stating that the witness had been cross-examined, the final line of the summary of this witness is that the witness was not cross-examined.
- Mohammad Ayoob Akhoon, stated that on 2 September 1991 50th Battalion CRPF personnel under the command of the “Dy S.P” stationed at “Wangam”, Bandipora, came to the house of the father-in-law of Abdul Khaliq Mir. The house was searched and Abdul Khaliq Mir was arrested. The witness along with “many more person” were present on the spot. On cross-examination, the witness stated that he was himself an army personnel. Therefore, he could say that a Dy S.P. was commanding the CRPF personnel. Further, that “the Camp at Block Bandipora had a sign board which read that 50th Battalion of CRPF was stationed at that place”.
- Mehmooda, wife of Abdul Khaliq Mir, stated that at 1:00 pm on 2 September 1991 personnel of the 50th Battalion CRPF arrested Abdul Khaliq Mir from his in-laws house at Onagam, Bandipora. On cross-examination, the witness stated that there were 30/40 CRPF personnel during the arrest. They had come in two small and one heavy vehicle. Abdul Khaliq Mir had come to see her because she had delivered a baby in her father's house. The witness stated that she did not know whether the alleged perpetrator or some other officer commanded the CRPF personnel.

The non-applicants 6 and 7 [presumably the Union of India and the CRPF] produced the following two witnesses:

- V.P.Srivastava, Deputy Commandant, 130th Battalion CRPF, who stated that he knew of one Neigi who was posted as Assistant Commandant of 50th Battalion CRPF and was transferred from 50th Battalion to the 72nd Battalion on 3 July 1991. This person joined the 72nd Battalion CRPF on 6 July 1991. “A copy of the signal” was produced by the witness. The witness further stated that no person was arrested by the 50th Battalion on 2 September 1991. On cross-examination, the witness stated that he did not remember where he was posted in the month of July 1991 but it was not in Kashmir. Further, which officer was placed at what place in 1991 in Kashmir was not known to him.
- Baldev Singh, Deputy Commandant 50th Battalion CRPF, stated that no company of the 50th Battalion CRPF was posted at Bandipora, but it was in Budgam District. None of the six companies of the 50th Battalion CRPF was posted in Bandipora on the relevant date. A DSP R.S.Neigi was transferred from the Battalion on 3 July 1991 and took charge of the 72nd Battalion on 6 July 1991. On cross-examination, the witness stated that he could not say whether any operation was conducted by the “50th Battalion BSF, in Allosa, Bandipora on 1 September 1991.” Accordingly, he was not in a position to depose whether the 50th Battalion CRPF conducted any operation in Aloosa, Bandipora on 2 September 1997 or 4 September 1997. The witness was posted in Imphal during this period. The witness stated that he had not brought the record of special operations conducted by the 50th Battalion from 1 September 1991 to 3 September 1991. Similarly, he had not brought “all the record” regarding the operation conducted on 2 September 1991 by the 50th Battalion. The witness stated that only one officer of the name of Neigi was posted in the 50th Battalion on 2 September 1991 [this appears to be a mistake in recording as it seems that the witness position was that the officer had been transferred by that date].

Based on the above, the enquiry report concluded that the 50th Battalion CRPF was camped at Block Bandipora and that Abdul Khaliq Mir had been arrested by the armed forces. But, the enquiry report states that it is unclear whether the alleged perpetrator or any other officer was commanding the personnel at the time of the arrest.

The enquiry report appears to therefore confirm the abduction of the victim and the role of the 50th Battalion CRPF but does not indict the alleged perpetrator. This is unfortunate considering that the witnesses appear quite clear on his role notwithstanding the official documents that suggest he was no longer with the 50th Battalion CRPF on the relevant date.

On 26 September 2000 the family of Abdul Khaliq Mir approached the SHRC. Before the SHRC,

submissions were made by the Commandant of the 50th Battalion CRPF who stated that the allegation was baseless, and that from April 1998 the 50th Battalion was not stationed in the area in question and that in September 1999 the battalion was not in village Garoora. The police authorities on the other hand confirmed the abduction of Abdul Khaliq Mir on 3 September 1990 by the 50th Battalion CRPF.

The SHRC disregarded the submissions of the Commandant of the 50th Battalion CRPF as it did not respond to the allegation for the relevant date. Despite the police report referring to the incident taking place on 3 September 1990 [while the family of Abdul Khaliq Mir referred to September 1991] the SHRC found that the abduction had taken place by the 50th Battalion CRPF and recommended Rs.1,00,000 ex-gratia government relief.

Despite the passage of 21 years no information exists on whether any investigations or prosecutions were conducted by the Jammu and Kashmir Police in this case. Further, it is shocking that the Jammu and Kashmir Police only filed the FIR 11 years after the crime only on the intervention of the SHRC. Further, it appears that absolute impunity has been ensured for the perpetrators of the crime as the IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the CRPF between 1990 and 2011 in Jammu and Kashmir but no information was provided. Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

Finally, it is clear that the impunity in this case was compounded by the High Court which should have remained seized of the investigations instead of leaving it to the discretion of the Jammu and Kashmir Police.

Case No. 16

Victim Details

1. Nazir Ahmad Gojjar [Enforced Disappearance]
Age: 20
Son of: Israil Khan Gojjar, Zaitoona
Resident of: Gojjar Patti, Malangam, Bandipora District
2. Majid Gojjar [Abduction, Wrongful Confinement and Torture]
Resident of: Gojjar Patti, Malangam, Bandipora District
3. Mohammad Ayub Gojjar [Abduction, Wrongful Confinement and Torture]
Resident of: Gojjar Patti, Malangam, Bandipora District

Alleged Perpetrators

1. Brigadier V. K. Sharma, Dogra Regiment,

- Army, Camp Chitarnar, Bandipora District
2. Major R. P. Singh, Dogra Regiment, Army, Camp Chitarnar, Bandipora District
3. Major R. D. Singh, Dogra Regiment, Army, Camp Chitarnar, Bandipora District

Case Information

On 26 January 1992 there was a crackdown in the Gojjar Patti area. At around 2:00 pm, Nazir Ahmad Gojjar along with two other persons, Majid Gojjar and Mohammad Ayub Gojjar went outside to collect sticks and to graze their goats nearby. On hearing firing, the three of them were scared and sat down. The armed forces arrested them. The family of Nazir Ahmad Gojjar was informed subsequently by a retired army officer in the area that the force responsible for their arrest was the Dogra Regiment of the army. The three persons arrested were taken and kept at a location close by for the night. When the women of the village sought their release they were informed that the persons would be released. The mother of Nazir Ahmad Gojjar saw all three boys at that time. But, on the second day, 27 January 1992, the three persons were taken to the Chitarnar Camp. When the family of Nazir Ahmad Gojjar approached the forces of the Chitarnar Camp they were told that the persons arrested had been taken to the Badami Bagh Srinagar Headquarters of the army. On approaching the Badami Bagh Headquarters they were informed that the persons arrested had been taken to the Kot Balwal jail in Jammu. After four months, Majid Gojjar and Mohammad Ayub Gojjar were released. They informed the family of Nazir Ahmad Gojjar that all three of them after being arrested and spending a night in the location close to their residence were taken to the Chitarnar Camp for the night of 27 January 1992. On 28 January 1992 Majid Gojjar and Mohammad Ayub Gojjar were taken to the Badami Bagh Headquarters. Nazir Ahmad Gojjar was not taken along. Majid Gojjar and Mohammad Ayub Gojjar stated that they were tortured during their detention. Nazir Ahmad Gojjar has disappeared since. Majid Gojjar died one year or so after the incident. The family of Nazir Ahmad Gojjar believes that Majid Gojjar died due to the torture by the army during his detention.

The family of Nazir Ahmad Gojjar filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, HCP 606/1993]. On 1 November 1994, an enquiry was instituted to be conducted by the District and Sessions Judge, Baramulla. The enquiry was concluded on 2 May 1996 and confirmed that Nazir Ahmad Gojjar was arrested, and disappeared, by Brigadier V. K. Sharma, Major R. P. Singh and Major R. D. Singh. The High Court also monitored the process of seeking sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA]. On being informed that sanction for prosecution was being sought the petition was disposed off on 6 October 1998.

On 23 September 2002, the High Court was provided a copy of the denial of sanction. The denial of sanction was dated 4 April 2002.

First Information Report [FIR] no.114/1996 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Bandipora Police Station on 7 May 1996²⁴. The family of Nazir Ahmad Gojjar filed another petition before the High Court [Original Writ Petition (OWP) 47/2006] seeking ex-gratia government relief of Rs. 5,00,000, compensation of Rs. 50,00,000, compassionate employment under SRO-43 [Statutory Rules and Orders], completion of the investigations on the registered FIR and sanction for prosecution under AFSPA. The petition was disposed off with a direction on 12 April 2007 for consideration of the ex-gratia government relief and compassionate employment under SRO-43. Further, the order states that investigation be expedited and preferably be completed within three months.

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Information was provided on both petitions.

In 2012, the family of the victim filed a petition before the High Court [Original Writ Petition (OWP) 955/2012] for sanction for prosecution under AFSPA. The petition remains pending.

The Inspector General of Police [IGP], Kashmir, in a letter dated 4 March 2006 states that during the investigation of this FIR offences u/s 302 [Murder], 342 [Wrongfully confining person] and 109 [Abetment] Ranbir Penal Code, 1989 [RPC] were found established against the alleged perpetrators listed above and a chargesheet was filed before the competent court and the case file was sent for the purpose of obtaining sanction for prosecution under AFSPA. Further, a letter dated 21 December 2009 by the Additional Superintendent of Police [ASP], Bandipora District, confirms that Nazir Ahmad Gojjar was not affiliated with any subversive activities.

The family of Nazir Ahmad Gojjar approached the State Human Rights Commission [SHRC] and the final decision was issued on 7 July 2006, and based on the report received from the IGP, Kashmir, recommended ex-gratia government relief of Rs. 1,00,000 and compassionate employment under SRO-43. While the family of the victim received Rs. 1,00,000 ex-gratia government relief from the Deputy Commissioner's office, they received no compassionate employment under SRO-43. The family of the victim stated in a statement given to the IPTK on 9 February 2012 that they are not receiving the SRO-43 benefits because the authorities mistakenly identified Nazir Ahmad

Gojjar as being a minor.

The Assistant Commissioner, Bandipora carried out an enquiry in the matter and a report was submitted on 20 September 2007 that confirmed the abduction of Nazir Ahmad Gojjar by the army and that Nazir Ahmad Gojjar was not involved in any subversive activity.

The inquiry report of the District and Sessions Judge, Baramulla, of 2 May 1996 is presently the only detailed finding on the case [the 20 September 2007 report of the Assistant Commissioner, Bandipora, while indicting the army does not offer specific details on the unit of the army involved or the alleged perpetrators] that may be analyzed, as the charge sheet filed is not in possession of the IPTK. But, before doing so, a few preliminary points may be made:

- The age of Nazir Ahmad Gojjar appears to have been an issue with regard to the grant of compassionate employment under SRO-43. The family of Nazir Ahmad Gojjar when contacted by the IPTK stated his age to have been 20 years when he was arrested. But, in the petition filed before the High Court [Original Writ Petition (OWP) 47/2006] he is listed as being 23 years of age.
- It is surprising that the High Court, while making its order of 12 April 2007, did not seem to be appraised of the position taken by the police [in the 4 March 2006 letter referred to above] regarding the completion of investigations and the filing of the chargesheet.
- The report of the IGP, Kashmir to the SHRC on 4 March 2006 refers to the unit of the alleged perpetrators as the 60th Battalion of Infantry Regiment. It is unclear what the import of this may be as elsewhere the Dogra Regiment is clearly referred to.

The inquiry report states that four witnesses were heard on behalf of the family of the victim: "Ayoob Khan, Ghulam Mohi-ud-Din Sheikh, Yousuf Gujjar and" the mother of the victim, Zaitoona. No evidence in rebuttal was provided. The relevant portions of the testimonies of these witnesses are as below:

- Witness Ayoob Khan stated that "three years before" [it is uncertain when the testimony of the witness was given] he, his brother, Majid, and Nazir Ahmad Gojjar were arrested by the army during a crackdown and later taken to "Chiternaar, Bandipora" and then shifted to the interrogation centre. "In the evening" he and his brother were released but the Nazir Ahmad Gojjar's whereabouts have not been known to date. The witness was cross-examined but no damage was done to his testimony.
- Witness Ghulam Mohi-ud-Din Sheikh stated

²⁴ Information on the FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. By communication dated 20 November 2013 a copy of FIR was provided. It was stated that the case was closed by declaring the perpetrators as untraced on 27 February 2003. The final report was submitted to a court on 7 April 2011.

that in the month of January 1992, the personnel of the Dogra Regiment took into custody "Ayoob Khan, Majid and Nazir Gujjar". "After some time", Ayoob and Majid were released but the Nazir Ahmad Gojjar's whereabouts have not been known to date. The witness was cross-examined but no damage was done to his testimony.

- Witness Mohammad Yousuf Gujjar stated that in the month of January 1992 the army took three persons during a crack down at Malangam village: Majid, Ayoob and Nazir Gojjar. R.P. Singh and R.D. Singh of the Dogra Regiment of the army were responsible for this. Majid and Ayoob were released from the Jammu jail one month after their arrest but the Nazir Ahmad Gojjar's whereabouts have not been known to date.
- Witness Zaitoona stated that "about three years back" [it is uncertain when the testimony of the witness was given] the army during a crackdown arrested her son, Nazir Ahmad Gojjar, whose whereabouts are not known to date. R.P. Singh and R.D. Singh were the officers who arrested her son along with two other persons.

Based on the above testimony, the judicial inquiry concluded that it had been established that in January 1992, the Dogra Regiment of the army, headed by R.D. Singh and R.P. Singh, during a crackdown at the Malangam village, arrested Ayoob, Majid and Nazir Gojjar and took them to "Chiternar Camp" and thereafter at some time Ayoob and Majid were released. The judicial inquiry concluded that it was a "clear case" of custodial disappearance and directed that a case be registered against the Commanding Officer of the Dogra Regiment and R. P. Singh and R.D. Singh. While the inquiry report clearly establishes the disappearance of the victim and the role of the Dogra Regiment of the army, and specifically R.P. Singh and R.D. Singh, a few comments must be made:

- The names of the two other persons arrested along with Nazir Ahmad Gojjar vary slightly in the different accounts but this appears not to be a substantive issue as it seems clear across the board that "Majid and Ayoob" were arrested along with Nazir Ahmad Gojjar.
- Of greater ambiguity is the issue of when the two boys were released. While the family in the statement to the IPTK, states they were released after four months, Mohammad Yousuf Gojjar states it was one month. Ayoob Khan states he and his brother were released "in the evening" but it is not clear which evening and when. This discrepancy might well be a substantive one.
- The role of the Commanding Officer, Brigadier V.K. Sharma, in the incident is admittedly limited. While it cannot be ruled out that he would possibly have had knowledge of the incident, and would therefore bear the responsibility for not intervening, the evidence is too limited presently to make that conclusion.

The final issue to be considered would be that of the sanction for prosecution under AFSPA. Sanction for prosecution was declined on 4 April 2002 for the following reasons:

1. That out of four witnesses before the District and Sessions Judge, Baramulla only one, Mohammad Yousuf Gujjar, has named Major R.D. Singh and Major R.P. Singh, and so prosecution case is not convincing.
2. That there are contradictions in the statement of the two witnesses about the arrest and release. Ayub Khan deposed that his brothers were released the same evening but Mohammad Yousuf Gujjar said that he and his brother were released after a month from Jammujail.
3. No witnesses blamed Colonel (now Brigadier) V.K. Sharma. He was named being the C.O of unit and on presumption of involvement, otherwise there was no evidence against him.
4. The Army officers denied on oath the arrest of individuals on 26 January 1992 or any other day and that they were not present in the unit during that period. In fact Major R.D. Singh was on annual leave for thirty days from 7 January 1992 to 5 February 1992 and Major R.P. Singh on casual leave of fourteen days from 22 January 1992 to 4 February 1992.
5. It is on record that the Lambardar [Numberdar, de facto revenue authority in the village, the family of the victim stated to the IPTK that his name was Mohammad Abdullah Sheikh]/ Sarpanch [the family of the victim stated to the IPTK that his name was Maawali Chauhan] of Malangam village certified on 25 February 2000 (witnessed by four prominent residents of the village) that the personnel of Dogra Regiment had not harassed or ill treated any person of the village. Nor was any man/ woman killed.
6. The grant of sanction to prosecute the Army officers is not justified based on available records and nor would it be in public interest. The prosecution of officers will undermine the morale, discipline, confidence and motivation of troops deployed in the sector.

The above reasons for the denial of prosecution sanction need to be analyzed one by one. The first reason is a misreading of the inquiry report. In addition to Mohammad Yousuf Gojjar, the mother of Nazir Ahmad Gojjar, Zaitoona, also names R.P. Singh and R.D. Singh. The second reason is more substantive as already stated above. But, it may be mentioned that Ayoob Khan's testimony, while referring to being released in the evening, does not state that he and his brother were released on the "same" evening. But, clearly, there is ambiguity caused by his evidence. The third reason has been commented upon above. To establish the role of the Commanding Officer, investigations would need to be carried. Without

perusing the chargesheet prepared by the police against him, it would be difficult to comment on his involvement. Admittedly, barring the principle of command responsibility, his role is presently unclear. The fourth reason, while persuasive if true, cannot be commented on presently as no official leave documents have been provided. The fifth reason for the denial of sanction, while apparently persuasive, is clearly misleading. A statement by the Lambardar/Sarpanch of the Malangam village eight years after an incident, in very general terms, is not convincing. This statement may have had more persuasive value if it was a specific denial of the instant incident being discussed. Further, the evidentiary value of such a statement is highly doubtful and it is most unfortunate that the Ministry of Defence would use such a piece of evidence to deny sanction for prosecution. With no information on the antecedents of the Numberdar/Sarpanch, or his breadth of knowledge of events in 1992, or when and under what circumstances his statement was placed on record, it is a highly unreliable piece of evidence. Further, the family of the victim states that there was no elected Sarpanch in the year 2000. He was a surrendered militant closely associated with the army. This case serves as a striking example of how the army undermines and subverts the processes of justice by making use of close associates or paid informers.

Therefore, in conclusion, the instant case appears to be a clear case of disappearance, despite certain ambiguities that are admittedly present. But, one might certainly argue that the correct forum to deal with such ambiguities might well be a courtroom. Therefore, perhaps sanction for prosecution should have been granted, especially against Major R.P. Singh and Major R.D. Singh. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 17

Victim Details

Sajad Ahmad Bazaz [Enforced Disappearance]
Age: 22
Occupation: Student / Shopkeeper
Son of: Ghulam Ahmad Bazaz
Resident of: Hazratbal, Srinagar

Alleged Perpetrators

1. Deputy Commandant D.S. Rathore, 30th Battalion Border Security Force [BSF]
2. Head Constable Kartar Chand Raina, 30th Battalion Border Security Force [BSF]
3. Head Constable Shoni Lal, 30th Battalion Border Security Force [BSF]
4. Azad Ahmad Mir, son of Mohammad Sultan

- Mir, [Operational name: Asgar], Informer,
Border Security Force [BSF]
5. Vinod Kumar, Border Security Force [BSF]

Case Information

Sajad Ahmad Bazaz was picked up on 12 February 1992 by personnel of the 30th Battalion BSF. Subsequently, Captain Anil Pal, 69th Battalion BSF, based in Sanatnagar, admitted to the family of Sajad Ahmad Bazaz that the victim was picked up by one battalion and transferred to another battalion of the BSF.

Further, K. Narendra Koshar of the Intelligence Bureau hinted to the family of the victim that the victim was with “them” and he provided them with an identifier – wound on the right hand of the victim – which the family recognized. Further, the family of Sajad Ahmad Bazaz states that this wound, received due to a household accident, was used by the authorities to slap a false case on the victim alleging that the injury took place across the border in Pakistan.

Sajad Ahmad Bazaz's arrest was the fall out of an altercation he had with the “Cat” [Informer], Azad Ahmad Mir, who owed him over Rs.1000 and had refused to pay.

The family of Sajad Ahmad Bazaz gave a statement to the IPTK on 27 February 2012.

First Information Report [FIR] no.44/1992 u/s 342 [Wrongfully confining person] Ranbir Penal Code, 1989 [RPC] was filed at the Nigeen Police Station on 27 June 1992²⁵. The 21 December 2011 communication from the Jammu and Kashmir Police stated that the case was closed as charge sheeted and filed by the Crime Branch, Kashmir before the court on 19 June 2004 against Azad Ahmad Mir. By communication dated 30 November 2013 it was reiterated that the case was investigated by the Crime Branch Srinagar. By communication dated 22 April 2014 from the Jammu and Kashmir Police information was provided that the chargesheet in the case had been filed before a competent court by the Crime Branch.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 in relation to this case that sanction had been sought from the Ministry of Defence on 24 January 2003 and was awaited. Reference is only made to Deputy Commandant D.S. Rathore.

The family of Sajad Ahmad Bazaz filed a petition

²⁵ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 21 December 2011 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

before the High Court of Jammu and Kashmir [HC no.181/1992, a habeas corpus petition].

Notices were issued but the parties, including the Union of India could not show the authority under which the victim had been arrested. Therefore, the High Court, disposed off the petition on 1 September 1992 by holding the arrest of the victim as illegal. On the continued confinement of the victim, the family filed a contempt petition [no.15/1992]. The BSF denied having arrested the victim. The High Court, on 8 October 1993 ordered an enquiry. This enquiry was concluded by the District Judge, Bank cases Commissioner, Srinagar, on 28 July 1994.

The witnesses on behalf of the petitioner confirmed that the victim had been abducted by BSF personnel.

Further, the mother of Sajad Ahmad Bazaz stated that she saw that the BSF personnel were accompanied by "Azad Ganai Alias Asgar". The father of Sajad Ahmad Bazaz identified the BSF personnel responsible for the abduction as "Vinod Kumar". The enquiry report found that there was "voluminous, unimpeachable, impartial and sufficient evidence on record to show that Sajad Ahmad has been arrested by 30th BN BSF on 12 February 1992." The enquiry report notes in particular the written statement of 26 April 1994 by Mahmood-ur-Rehman, Additional Chief Secretary, Home Department which was submitted during the enquiry. This statement admits the arrest of the victim by the personnel of the 30th Battalion BSF. Further, that a chargesheet had been completed against Deputy Commandant D.S. Rathore and Azad Ahmad Mir and sanction for prosecution was submitted to the Government on 25 September 1993 [but, also on record is a letter dated 4 January 1994 from the Government of Jammu and Kashmir seeking sanction for prosecution from the Ministry of Home Affairs].

The Jammu and Kashmir Police submitted a progress report before the High Court on 2 July 1996 wherein it was stated that Deputy Commandant D.S. Rathore had been interrogated. Further, that Head Constable Kartar Chand Raina and Head Constable Shoni Lal had accompanied the Deputy Commandant when arresting the victim.

It appears that the contempt petition was dismissed in July 2004 as being infructuous as a chargesheet had been filed against Azad Ahmad Mir. But, on 21 May 2002, the Ministry of Home Affairs declined sanction for prosecution purely on the basis that a parallel court-martial process by the BSF had acquitted Deputy Commandant D.S. Rathore.

On 20 November 1999, the family of the victim were awarded Rs.2,00,000 as compensation based on a suit filed before the District Judge, Srinagar against the Union of India. The family of the victim appealed

this order before the High Court as they had sought compensation of Rs. 40,00,000.

It is noteworthy that the Government of Jammu and Kashmir took 11 years to investigate and process the case for acquiring sanction for prosecution under AFSPA, which apparently helped the perpetrators in evading justice.

Even after the confirmation of the arrest and detention of Sajad Ahmad Bazaz by the judicial enquiry, and despite the passage of twenty years, no official information exists on the alleged perpetrators being brought to justice. Further, it needs to be ascertained why all the alleged perpetrators were not proceeded against before a court, as it appears proceedings were only considered against Deputy Commandant D.S. Rathore and Azad Ahmad Mir.

Finally, the manner in which the BSF used the court-martial proceedings to subvert any hope of justice in this case is consistent with the all pervasive impunity in Jammu and Kashmir.

Case No. 18

Victim Details

Ghulam Nabi Bhat [Enforced Disappearance]
Age: 20
Occupation: Tailor
Son of: Ghulam Ahmad Bhat
Resident of: Islamia Colony, Kani Dewar, Hawal, Srinagar

Alleged Perpetrators

Case No. 18

Victim Details

Ghulam Nabi Bhat [Enforced Disappearance]
Age: 20
Occupation: Tailor
Son of: Ghulam Ahmad Bhat
Resident of: Islamia Colony, Kani Dewar, Hawal, Srinagar

Alleged Perpetrators

1. Constable Labhour Singh, 107th Battalion, Border Security Force [BSF], Camp Hawal
2. Guard Commander N.K. Raina²⁶, 107th Battalion, Border Security Force [BSF], Camp Hawal

Case Information

On 8 June 1992, Ghulam Nabi Bhat was picked up by a BSF party at about 10:30 am. Mohammad Sharief Malik, a shopkeeper, was a witness to this abduction.

26 Both the alleged perpetrators were reported killed subsequently in militancy related activity

Ghulam Nabi Bhat has disappeared since.

The family of Ghulam Nabi Bhat gave a statement to the IPTK on 15 February 2012.

Following the abduction of Ghulam Nabi Bhat the BSF did not allow the family to meet him. Therefore, the family of Ghulam Nabi Bhat filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, Section 491 Criminal Procedure Code, 1989 (CrPC) petition no. 88/1992²⁷]. The High Court ordered a judicial enquiry on 15 November 1994, which was conducted by the District and Sessions Judge, Srinagar. The enquiry report was submitted on 12 May 1998. The report confirmed the disappearance of Ghulam Nabi Bhat during the custody of the BSF. The High Court disposed off the matter on 16 November 1998 directing a registration of a First Information Report [FIR].

FIR no. 124/1998 u/s 364 [Kidnapping/Abducting to murder], 343 [Wrongful confinement for three or more days] Ranbir Penal Code, 1989 [RPC] was filed on 5 December 1998 at Nowhatta Police Station following a Jammu and Kashmir High Court order²⁸. By communication dated 30 November 2013 from the Jammu and Kashmir Police it was stated that the case was under investigations. Subsequently, the BSF did not cooperate with the investigation and a letter was sent by the Station House Officer [SHO], Nowhatta Police Station to the Registrar General of the High Court on 1 August 2000 to this effect.

Consequently, a petition was filed by the family of Ghulam Nabi Bhat before the High Court [Original Writ Petition (OWP) 158/2001] seeking cooperation of the BSF with investigations, and compensation. In reply to this petition, the BSF admitted that the victim had been arrested by the BSF 107th Battalion, but as he was a suspected militant. Ghulam Nabi Bhat was kept at "TAC HQ 107 BATTALION BSF" for questioning but escaped on the intervening night of 9 and 10 June 1992. The BSF claimed an enquiry was conducted against the two alleged perpetrators. The State and the police took a similar position following their investigations but did not refer to Ghulam Nabi Bhat as a suspected militant, and stated that the two alleged perpetrators were responsible for only the escape of Ghulam Nabi Bhat. The response also states that both alleged perpetrators were subsequently killed in militancy related activity. No proof of the same is provided. The High Court held on 15 October 2003 that the case of escape from the BSF [while the representations before the court refer to the 107th Battalion, the High Court refers to the 106th Battalion. One can only assume this to be a typographical mistake] was not made out and also ordered compensation of Rs. 1,00,000. A Letters Patent

Appeal [LPA] [no.176/2003] was filed against this decision on grounds that the compensation was not adequate. On 26 May 2010, the Division Bench of the High Court amended this compensation to Rs. 5,00,000, plus interest. Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Information was provided.

A Special Leave Petition [SLP] filed before the Supreme Court of India against this order was dismissed on 10 December 2010. A contempt petition [280/2010] was filed against the non-implementation of this order. Information on the contempt petition number was sought through RTI on 16 February 2012. No information was provided.

As an initial comment while analyzing the case, it is clear that the abduction of Ghulam Nabi Bhat by the 107th Battalion of the BSF on 8 June 1992 is accepted by all the parties, and crucially the High Court. The only point of disagreement appears to be on the position of the BSF, the State and police that the victim escaped and was therefore not disappeared in the custody of the BSF. The family of Ghulam Nabi Bhat does not accept this position and also states that no FIR on the escape of Ghulam Nabi Bhat was filed, thereby suggesting that it was a concocted story. But, crucially for Ghulam Nabi Bhat and his family, the High Court does not accept the theory that he escaped. The court, in its 15 October 2003 order states, on the issue of the escape of Ghulam Nabi Bhat, that:

"...nothing has been submitted to show that a serious department action was initiated, immediately after the so called escape against these personnel for their failure, to prevent escape of said Ghulam Nabi. It appears that the stand, of escape has been set up to avoid legal consequences, and in the facts and circumstances as reflected from the record, the stand taken is not sustained from record, and appears to be highly improbable, and has to be rejected...the State, in these circumstances, has obviously failed in its duty either to protect the life of an innocent citizen who was arrested by an agency of the State, or to account for his disappearance in the custody of the BSF."

The enquiry report by the District and Sessions Judge, Srinagar was submitted on 12 May 1998. Relevant testimony before the judicial enquiry is summarized below:

- The evidence of Mehraj-ud-Din, brother of Ghulam Nabi Bhat, was recorded. The witness stated that at "10:30" on 8 June 1992 Ghulam Nabi Bhat was taken by the BSF and

27 Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. No information was provided. Information on this petition was sought again on 4 April 2014.

28 Information on this FIR was sought through RTI on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. By communication dated 22 April 2014 from the Jammu and Kashmir Police a copy of the FIR was provided.

subsequently disappeared.

- Mohammad Sharief Malik also testified that Ghulam Nabi Bhat was taken by the BSF. The witness testified that Ghulam Nabi Bhat was taken to Papa-II "where S.P. Bashir Ahmed was on duty who told them that he was taken to Harwan and they searched him and 30th Battalion told them that he is in their custody and had promised them that he will be released after he was all right".
- Witness Mohammad Ashraf Malik testified that he found Ghulam Nabi Bhat in Hotel no.4 at Shivpora, Srinagar. But, subsequently, he was not allowed to meet with the victim.
- Witnesses Abdul Rashid Mir and Ghulam Mohi-ud-Din also testified to the abduction of Ghulam Nabi Bhat by the BSF on 8 June 1992. They also stated that they had gone to meet SP Ghulam Nabi and were given a slip by Hazratbal Police Station and they met Ghulam Nabi Bhat twice before he was taken to Hotel no. 3.
- Witnesses Sitara, Mumtaza and Abdul Majid Bhat testified to the abduction of Ghulam Nabi Bhat by the 107th Battalion of the BSF and meeting with him at Hotel no. 3.
- The respondents, the State and the BSF, stated before the enquiry that Ghulam Nabi Bhat was never arrested.

Before considering the conclusions of the enquiry, two preliminary points may be made. First, the manner in which the enquiry report summarizes the testimony of the witnesses is unclear, and lacks sufficient detail for a thorough analysis. Second, the stand of the BSF of blanket denial of arrest, as stated before the District and Sessions Judge, Srinagar, sharply contradicts with their subsequent stand that the witness was arrested but escaped. This apparent duplicity must be highlighted.

Based on the evidence before it, the enquiry report stated that an irresistible conclusion had been reached that Ghulam Nabi Bhat was abducted by the BSF on 8 June 1992 and then shifted from Hariniwas Interrogation Centre to Hotel no.3 and 4, Shivpora and subsequently Papa-II Interrogation Centre and then subsequently disappeared. While the enquiry report rightly confirms the abduction by the BSF it is unsure how the report definitively concludes that Ghulam Nabi Bhat was detained at Harinwas. But, as stated earlier, the witness evidence has been poorly summarized in the enquiry report.

In conclusion, from the enquiry report, to the contentions of the parties before the High Court, and the High Court orders, the abduction of Ghulam Nabi Bhat is beyond doubt. Further, the BSF, and it appears the 107th Battalion, is specifically to blame. But, what remains uncertain is the exact role of the alleged perpetrators listed above. Further, even assuming that the alleged perpetrators died in militancy related activities [for which no proof has been provided], a full

investigation would be necessary to identify all persons responsible for the abduction and disappearance of the victim as the information on record, including sightings of the victim at various places, strongly suggests the involvement of a number of personnel of the armed forces. This is particularly important as it is unimaginable that a Constable and a Guard Commander [the designations of the alleged perpetrators] would have executed the crime without the involvement of superior officers.

Based on the witness statements before the judicial enquiry the victim was taken to at least four places [Hotel no.3, Hotel no.4, Papa-II interrogation centre, and Harwan] following his abduction. These places would be under the command of senior officers, whose orders and acquiescence would be necessary for the detention of Ghulam Nabi Bhat.

It must also be borne in mind that considering that the story of the escape of Ghulam Nabi Bhat was considered to be a false one by the High Court, and in light of the suppression of facts vis-a-vis the arrest of the victim by the BSF before the judicial enquiry, the naming of the alleged perpetrators by the BSF may be a further attempt by the BSF to cover up the disappearance of Ghulam Nabi Bhat and the possible involvement of other senior officers.

Despite the passage of 20 years there appears to be no progress on the investigations.

Further, the IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Case No. 19

Victim Details

Mohammad Rafiq Bhat [Enforced Disappearance]
 Age: 19
 Occupation: Carpet weaver
 Son of: Abdul Rehman Bhat
 Resident of: Qutubudinpora, Nowhatta, Srinagar

Alleged Perpetrators

1. Inspector Jain, 69th Battalion Border Security Force [BSF]
2. Commandant Sethi, 69th Battalion Border Security Force [BSF]

Case Information

On 19 August 1992, Mohammad Rafiq Bhat was picked up from his maternal home in Miskeenbagh by the personnel of the 69th Battalion BSF. The family of Mohammad Rafiq Bhat went to the Fair View Guest House, Srinagar [operational name: Papa-II Joint Interrogation Centre] to find him. While initially they were told to wait, subsequently, they were informed that Mohammad Rafiq Bhat was not detained there. Then the family saw him at the Shivpora Camp. The camp authorities informed them that they could only allow a meeting with Mohammad Rafiq Bhat following receipt of permission from authorities at Papa-II Joint Interrogation Centre. The meeting never took place.

FIR no. 164/1996 u/s 302 [Murder], 364 [Kidnapping/Abducting to murder] and 201 [Causing disappearance of evidence/giving false information] Ranbir Penal Code, 1989 [RPC] was filed at the Khanyar Police Station²⁹. The 7 August 2012 communication from the Jammu and Kashmir Police states that the case was closed by declaring the perpetrators as untraced. By communication dated 30 November 2013 from the Jammu and Kashmir Police it was stated that the record was not traceable. By further communication dated 22 April 2014 it was stated that the closure report had not been submitted [presumably before the competent court].

The family of Mohammad Rafiq Bhat gave a statement to the IPTK on 27 February 2012.

The family of Mohammad Rafiq Bhat stated that they declined any ex-gratia government relief or compassionate employment under SRO-43 [Statutory Rules and Orders].

The family of Mohammad Rafiq Bhat filed a petition before the High Court of Jammu and Kashmir [HC 19/1999]³⁰. The BSF denied that Mohammad Rafiq Bhat had been arrested. On 17 October 2000 the High Court ordered a judicial enquiry to be conducted. The judicial enquiry was conducted by the Additional Sessions Judge, Srinagar and was completed on 21 February 2003.

The IPTK does not have the entire documentation in the case. But, the following excerpt taken from a report entitled "In search of vanished blood: the writ of habeas corpus in Jammu and Kashmir: 1990-2004"³¹ provides certain information:

"The BSF's reply denying that 22 Bn BSF had lifted/arrested Mohammad Rafiq Bhat on 19 August 1992, determined the entire course of the proceedings in the case. Thereafter, the case proceeded on the

assumption that it was only the 22 Battalion BSF which was accused in his arrest. The assumption was misconceived. The petition did not assert that Rafiq was arrested by the 22 Battalion. On the contrary, it was an admitted fact that three BSF Battalions – 22 Battalion, 69 Battalion and 110 Battalion – had operational jurisdiction over the area from where Rafiq was arrested. The FIR lodged by Rafiq's family named all three Battalions. It also named two officers, Inspector Jain and Commandant Sethi, as members of the arresting party. Before the inquiry, most of the witnesses on Rafiq's behalf named 69 Battalion as being responsible for his arrest. Besides failing to take note of this crucial point, the Inquiry Judge also went astray while appraising the testimony of the witnesses.

The eye witnesses on behalf of Rafiq Bhat were crystal clear on the fact that he was arrested by the BSF. However, they were not so clear about the post arrest events, and their account varied from that of Rafiq's parents. The Inquiry Judge was exercised by these contradictions and decided to use them to become ambivalent about the identity of the battalion that had arrested Rafiq. His report declared that there was no doubt that Rafiq Bhat has disappeared but held that (p)arents as well as other witnesses of the applicant have not been able to prove as to which Battalion of BSF had arrested Rafiq Ahmad.

The final nail in the coffin was however left to the High Court, which dismissed the case for non-prosecution, even as it was waiting for the respondents to file objections to the inquiry report. Though the respondents had not filed their objections, for which time had been granted to them, the Court assumed that the absence of representation on behalf of the petitioner on two consecutive dates was proof that the cause does not survive. An extract from the chronology of the case, illustrating the absurdity, is reproduced below:

21.02.2003 Date of inquiry report.

20.05.2003 Court order: None for the respondents. Parties granted two weeks time to file objections.

08.07.2003 Court order: The respondents granted further time to file objections.

13.08.2003 Court order: None for the petitioner. A proxy appeared for the state government's counsel. Adjourned to await the filing of objections by the respondents.

26.08.2003 Final Order: None for the parties. (O)n the last occasion the case was adjourned because counsel for petitioner was not present. It, therefore, dismissed the case for want of prosecution."

29 Information on the FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. By communication dated 7 August 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013.

30 Information on the petition number was sought through RTI on 2 July 2012. No information was provided. Information on this petition was sought again on 4 April 2014.

31 Ashok Aggarwal, October 2008, pp. 40-41

The only document on record that may be analyzed is the 21 February 2003 judicial enquiry report. The enquiry heard six witnesses on behalf of Mohammad Rafiq Bhat, and three witnesses on behalf of the Union of India and the BSF.

The below is a summary of the relevant witness testimony on behalf of Mohammad Rafiq Bhat:

- Abdul Rehman Bhat, the father of the victim, stated that Mohammad Rafiq Bhat was abducted by the BSF on 19 August 1992 from "Miskeen-bagh, Srinagar". The witness, in search of Mohammad Rafiq Bhat, went to the BSF camps situated at Nowhatta, Naid-yar and Sheraz. For three days the arrest of Mohammad Rafiq Bhat was denied but on the third day, the 69th Battalion BSF told the witness that Mohammad Rafiq Bhat had been arrested by them, but the witness was then referred to the Papa-II Joint Interrogation Centre. At this location the witness was told that Mohammad Rafiq Bhat had been taken to "Gogo-land". At "Gogo-land" the witness was informed that Mohammad Rafiq Bhat had been taken to Shivpora. At Shivpora, the witness, his wife and sister saw the victim "waving his hand from a window of Shivpora camp". But, they were not allowed to enter and meet with him. They were told to get the permission to meet from "the officer". In Papa-II Joint Interrogation Centre they were not given the permission. The family of Mohammad Rafiq Bhat went to the Shivpora Camp on many occasions, they saw the victim, but they were not allowed to meet with him. Subsequently, the whereabouts of Mohammad Rafiq Bhat are not known. The witness testimony was not damaged on cross-examination.
- Raja, the mother of Mohammad Rafiq Bhat, stated that on 19 August 1992, Mohammad Rafiq Bhat had left towards her mother's house. As he reached her mother's house, the BSF conducted a raid and arrested him. Following his arrest, the witness lodged a report in the police station. Subsequently, the witness went to Papa-II Joint Interrogation Centre where they were told that they would be given a chance to meet with Mohammad Rafiq Bhat, but were not allowed to do so. Subsequently, at the BSF camp at Shivpora, the witness saw Mohammad Rafiq Bhat "from a small distance with her own eyes. Her son hinted by showing hand". The witness testimony was not damaged on cross-examination. The witness provided further details that Mohammad Rafiq Bhat had been arrested at "Miskeen-bagh". The witness also added that Mohammad Rafiq Bhat had sent a letter from the Central Jail, Jammu.
- Mumtaza, the aunt of Mohammad Rafiq Bhat,

stated that Mohammad Rafiq Bhat was arrested from her house. Following his arrest, the witness states that "they went to Rainwari B.S.F head-quarter, who told them that it was B.S.F.69 Battalion. Then they took a slip for meeting Rafiq Ahmed and went to Shivpora, Gupkar, Batwara, and from Papa-II they saw Mohammad Rafiq through window. Rafiq through window asked whether they have brought cigarettes for him, they replied in affirmative." The witness testimony was not damaged on cross-examination.

- Abdul Ahad Rather, testified that he saw the arrest of Mohammad Rafiq Bhat by the BSF in the month of August 1992. The witness testimony was not damaged on cross-examination.
- Habla, a close relative of Mohammad Rafiq Bhat, stated that Mohammad Rafiq Bhat "had come to her house" when he was arrested by the BSF. Further, she stated that she had seen the victim in Papa-II Joint Interrogation Centre and Mohammad Rafiq Bhat through the window asked for cigarettes. The witness testimony was not damaged on cross-examination.
- Ghulam Mohi-ud-Din Bhat, a neighbor of Mohammad Rafiq Bhat, stated that on 19 August 1992, Mohammad Rafiq Bhat had said that he was going to his grandfather's house at Nowpora and left. Subsequently, information was received that Mohammad Rafiq Bhat had been abducted by the 22, 69 and 110 Battalion's of BSF. In October 1992, the witness and the parents of Mohammad Rafiq Bhat saw him in the BSF camp at Shivpora through a window from a distance. The witness also stated that "they were not permitted to talk to him by B.S.F.". The witness testimony was not damaged on cross-examination.

The below is a summary of the relevant witness testimony on behalf of the respondents:

- Ranjit Singh, stated that he was posted with the 22nd Battalion BSF, head office, in "hotel Mumta" in 1992. On 19 August 1992, their battalion did not go for any raid or cordon and no one was arrested. On cross-examination, the witness stated that in the Nowhatta area in those days the 69th and 110th Battalions [presumably of the BSF though not expressly mentioned] was also posted. In addition to other answers given during the cross-examination, the witness also stated that "during his posting with 22nd Battalion of BSF how many persons were arrested he cannot say. He remained posted there for about two years. No person was brought to the camp after arrest".
- A.K.Sethi, Inspector General, BSF, stated that in the year 1992 he was posted as the

Commandant of the 22nd Battalion BSF. The witness denied that any operation took place on 19 August 1992. The witness denied that his battalion ever arrested Mohammad Rafiq Bhat. On cross-examination the witness stated that “he does not remember as to during his posting how many persons were picked up and handed over to the police. Record is maintained in the unit. On the perusal of which he can say Mohammad Rafiq was not arrested. Before coming to the court he did see the entire record, on the basis of which he states that Mohammad Rafiq Bhat was not arrested during those days”.

- Omesh Chabder Sobidar, Sub-Inspector at the headquarters in 1992 stated that he used to maintain the records of any person arrested. The witness stated that “today he has come from Baramulla so could see the record.” But, the witness stated that on 19 August 1992 no person was arrested. The witness testimony was not damaged on cross-examination.

The enquiry found contradictions in the testimonies of witnesses on behalf of Mohammad Rafiq Bhat. But, the enquiry found that “Disappearance is totally established”.

Based on the enquiry report above, two comments may be made:

- There appears uncertainty on the issue of the FIR. While the mother of Mohammad Rafiq Bhat suggests that a report was filed with the police immediately after the arrest of Mohammad Rafiq Bhat, the FIR numbers referred to suggest it was filed in 1996.
- There exists a glaring contradiction in the sighting of Mohammad Rafiq Bhat. Two locations are referred to: Papa-II Joint Interrogation Centre and the BSF Camp at Shivpora. Unfortunately, the matter was not clarified in the enquiry report and the enquiry concluded, based on this contradiction mainly, that responsibility could therefore not be fixed. Admittedly, the specific names of the alleged perpetrators also do not find mention in the enquiry.

Therefore, while the enquiry correctly affirms the disappearance, the unit responsible, and the specific persons responsible, admittedly, cannot be conclusively fixed on the enquiry report alone.

The manner in which the High Court dealt with the matter only enabled the perpetrators of the crime of disappearance of victim, which was established, to evade justice. Further, it also appears that the record is no longer traceable by the Jammu and Kashmir Police, and the closure report was not filed before a court, thereby denying any chance of reviewing the work of the Jammu and Kashmir Police.

Further, the absolute impunity in this case is clear as the IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir but no information was provided on this case.

Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided on this case.

Case No. 20

Victim Details

Mohammad Shafi Shah [Torture, Enforced disappearance]

Occupation: Government Service [Flood and Mechanical Department]

Son of: Nyamatullah Shah

Resident of: Janbaz Pora, Baramulla district

Alleged Perpetrators

1. Major Sanjay Ahuja, Officer-in-Command, 15 Punjab Regiment

Case Information

On 13 September 1992, the victim was on his duty with a dredging machine in the Jhelum. The victim was working as a Chowkidar there. On that day, the army was on a search operation looking for some militants in that area. During this operation, they picked up the victim from his workplace. The army was of 15 Punjab Regiment, headed by Major Sanjay Ahuja, the then officer-in-command.

From that place, he was taken to Chakloo. The family was informed about his abduction when the victim was taken through his village and, later on, they got to know that the victim was in Chakloo through the residents of that village. In Chakloo, victim was reportedly tortured mercilessly which his family got to know through the people of Chakloo.

At about 10 pm that night, the family lodged a First Information Report [FIR] against Major Sanjay Ahuja. The next day, when the family went to the army camp, they denied any knowledge of the victim. The family tried to look for the victim but did not receive any information for three days. After three days, when the family again approached the camp, some officer there [unidentified] told them that they would meet the victim after one month. But that never happened. After a month, when family again approached the army, two army personnel on a personal level asked the family not to search for the victim and were informed that he was killed on the very day he was abducted.

After seven years, they received the death certificate and then the family applied for compensation in the

SHRC. The family has received the ex-gratia amount of Rs. 1 lakh but employment under Statutory Rules and Orders [SRO-43] [Compassionate employment] is still pending in the Deputy Commissioner's [DC] office.

The brother-in-law of the victim, Hamidullah Shah, gave the above statement to the IPTK on 11 June 2015.

FIR no. 307/1992 under section 302 [murder] Ranbir Penal Code [RPC] filed at Police Station Baramulla. This FIR was filed two months after the incident on 13 November 1992 [it is therefore unclear what the family filed on the very day of the abduction]. The FIR names "Major Ahuja" and the delay is explained as because the family had been approaching the army authorities for two months to know the whereabouts of the victim. The FIR is detailed and states that the victim was beaten severely when he was picked up and was even bleeding from his mouth and rectum.

ARTI was filed regarding all FIRs against state forces in Jammu and Kashmir. In response to this, by communication dated 25 December 2013 from Jammu Kashmir Police, a copy of the FIR was provided and information was provided that the case was closed as untraced on 1 August 1993 [this is also noted on the FIR itself]. Further information was sought through RTI dated 14 November 2014.

It also appears that the case was processed before the State Human Rights Commission [SHRC]. On record is an incomplete [only one page is available] communication from the Zonal Police Headquarters Kashmir Zone to the SHRC. This communication states that as per report from obtained from Senior Superintendent of Police, Baramulla, on 13 November 1992, Mohammad Maqbool Shah, son of Rehmatullah Shah, resident of Janbazpora, Baramulla, produced an application in Police Station, Baramulla duly endorsed by Deputy Inspector General, Range Baramulla alleging that on 13 September 1992, army troops of 15 Punjab apprehended Mohammad Shafi Shah, son of Rehmatullah Shah and beat him mercilessly. He was then lifted by troops in their vehicle in injured condition. The complainant approached the concerned army who denied the arrest. A case was then registered and investigation taken up. Statements of complainants Abdul Khaliq Dar, Samander Shah, Habibullah Shah, Mohammad Rafiq Shah, Mohammad Rajab Shah, all residents of Janbazpora, were recorded. They have corroborated the FIR. Statements of Major Rajesh Kumar [officer Adjutant of 15 Punjab] and Major Sanjay Ahuja were also recorded and they denied the arrest of the victim.

This case clearly illustrates the impunity that exists. The victim has disappeared. Witnesses not only accuse the army but they have also been able to identify the accused officer responsible – the alleged

perpetrator. A FIR is filed in which the allegation and name of accused are mentioned. The police is even able to contact the accused person – Sanjay Ahuja. Despite this, the police still close the case as "untraced". It seems the police closed the case based entirely on the denial of the army. This case is a strong indictment of not only the alleged perpetrator but the system of impunity itself.

Case No. 21

Victim Details

Farooq Ahmad Khan [Torture, Enforced disappearance]

Age: 26

Son of: Ghulam Ahmad Khan

Resident of: Gundpora, Rampora, Bandipora District

Alleged Perpetrators

1. Major Joshi, 10 Bihar Regiment, Safapora Camp
2. Major Manoj, 10 Bihar Regiment, Safapora Camp

Case Information

On 1 December 1992, the army of 10 Bihar Regiment camped at Safapora conducted search operations in village Gundpora - 30 kms away from army camp Safapora.

All the villagers were asked to assemble in a school ground at Gundpora. The army conducted an identification parade. Meanwhile, a group of villagers including Mushtaq Ahmad Lone, son of Ghulam Ahmad Lone and the victim were arrested from a friend's house by the army. Both of them were taken to the Safapora camp. This operation was led by Major Manoj and Major Joshi.

After eight days of their arrest, the army from Safapora, once again led by the above named officers, returned to the village along with the victim and Mushtaq Ahmad Lone. The victim was critically injured as he had been brutally tortured. His family saw him on this occasion. Some of the villagers even talked to him, such as head of the village Sanaullah Bhat and senior citizens Abdul Ahad, Mohammad Afzal Lone, Ghulam Ahmad Bhat and others. He was then taken back to the Safapora camp.

The following day the family of the victim approached the camp and met Major Joshi. They were assured that the victim would be released. But he has since disappeared, even though Mushtaq Ahmad Lone was subsequently released by the army.

The family of the victim gave the above statement to the IPTK.

The testimony above is credible and most crucially

there are numerous eye-witnesses to this crime. The statements of Mushtaq Ahmad Lone and other eye-witness must be recorded. The allegations warrant further investigation.

Case No. 22

Victim Details

Farooq Ahmad Bhat [Torture and Enforced Disappearance]

Age: 25

Occupation: Chemist

Son of: Ghulam Mohammad Bhat

Resident of: Hamdani Mohalla, Saddar Bazaar, Bijbehara, Islamabad District

Alleged Perpetrators

1. Major Alok Chakrabarti, Company Commander, 1 Rashtriya Rifles [RR], Army
2. Company Havaladar Major Omprakash, 1 Rashtriya Rifles [RR], Army
3. Sepoy Vinod Kumar, 1 Rashtriya Rifles [RR], Army

Case Information

First Information Report [FIR] no.106/1993 u/s 302 [Murder], 201 [Causing disappearance of evidence/giving false information] Ranbir Penal Code, 1989 [RPC] was filed at the Bijbehara Police Station on 5 December 1993³². By communication dated 19 May 2012 from the Jammu and Kashmir Police information was provided that the case was closed by declaring the perpetrators as untraced, and then reopened by the Crime Branch and the investigations were ongoing. A copy of the FIR was provided on 21 May 2012. The FIR states that on 1 December 1993 at 12:00 noon, Farooq Ahmad Bhat was at his medical shop along with Mubarak-ud-Din Shah, son of Mohammad Yousuf Shah, and Ahmad Wani, son of Aijaz Ahmad Wani. Personnel of 1 RR came and picked up Farooq Ahmad Bhat. The other two persons were beaten on the spot. On the intervening night of 1 and 2 December 1993 it came to be known that Farooq Ahmad Bhat had been beaten to death by sticks. The dead body of the victim was not found. By further communication dated 9 July 2012 from the Jammu and Kashmir Police, it was confirmed that the investigations were still being carried out by Crime Branch, Srinagar. By communication dated 16 November 2013 from the Jammu and Kashmir Police a copy of a communication from the Senior Superintendent of Police [SSP], Anantnag to the SSP, Crime Branch, dated 19 May 2012, is provided. This communication states that the Crime Branch completed investigations, closed the case as chargesheeted, and submitted it for government sanction for

prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] on 16 January 2004, but did not intimate on the status of sanction. By communication dated 16 May 2014 from the Jammu and Kashmir Police the following information was provided: "The investigation of these cases has been closed as untraced. Unless and until the Hon'ble court admits/agrees with the the investigation of the case, the same is supposed to be subjudice before the Court of law." By communication dated 18 December 2014 from the Jammu and Kashmir Police the decline of sanction letter from the Ministry of Defence was provided. The letter is dated 15 March 2010 and is from the Under Secretary to the Government of India, Ministry of Defence, to the Secretary to Government, Home Department, Government of Jammu and Kashmir. The letter first makes reference to the request made by Government of Jammu and Kashmir for sanction on 29 August 2007. The Ministry of Defence denied sanction by stating that the allegations were devoid of substance. Further, that the victim escaped from custody on 2 December 1993 "in the cover of darkness during the fight between troops and militants and was untraceable thereafter". Further, that the police had no credible proof for their allegations. Further, that the dead body had yet to be recovered.

Also, on record is a report filed by Major Alok Chakrabarti before the Bijbehara Police Station on 2 December 1993 that the army personnel of 1 RR were attacked and Farooq Ahmad Bhat, a militant who had been arrested on 1 December 1993 and was accompanying the army personnel, escaped.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that it was under consideration. Only the name of Major Alok Chakrabarti is mentioned. The date of the incident is listed as 5 December 1993. The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction was declined for all three alleged perpetrators on 15 March 2012. The Ministry of Defence, in response to an RTI, stated on 10 January 2012 in relation to this case that sanction for prosecution under AFSPA was declined on 15 March 2012. Further, that: "allegation leveled is devoid of substance. Police have not brought out any credible evidence to prima facie prove that the individual died in military custody". The date of the incident is listed as 1 December 1993. Only the name of Major Alok Chakrabarti is mentioned.

A committee was constituted, in adherence to an order of the District Magistrate, Anantnag passed on 18 April

³² Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

2001 that concluded that Farooq Ahmad Bhat could be presumed to be dead. Further, the committee, based on witness testimony and a report by the Senior Superintendent of Police [SSP], Anantnag that confirmed that the victim was not involved in militancy activity, found that the version of the father of Farooq Ahmad Bhat was accurate i.e. that Farooq Ahmad Bhat was abducted on 1 December 1993 by the personnel of 1 RR.

It is noteworthy that it took the Jammu and Kashmir Police, Government of Jammu and Kashmir and the Ministry of Defence 17 years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice [though there is confusion on whether sanction was declined in 2012 or 2010]. Further, the available documents suggest that a court-martial was not conducted in this case by the army. Plus, while the police forwarded the case in 2004, the Home Department only forwarded it in 2007.

It is clear that the armed forces have facilitated the practice of illegal detentions and unrecorded arrests without following the standard operating procedure of handing over the arrested person to the police. This leads to an unaccountable detention followed by torture, disappearance, extra-judicial executions, fake encounters and sometimes release of victims in return for money.

The SSP, Anantnag and the District Magistrate, Anantnag both confirm that the victim was not a militant. Therefore, the arrest of the victim may be considered illegal and the burden is on the army to prove that Farooq Ahmad Bhat was not killed in custody. It also needs to be ascertained on what basis the Jammu and Kashmir Police concluded that Farooq Ahmad Bhat was killed as the body was not found and no evidence has been brought forward on record. Finally, the denial of sanction, based on the premise of the escape of the victim, is baseless. The burden must be on the Ministry of Defence to establish that the victim escaped. For example, it is stated that there was firing at that point between the troops and militants. Was any FIR filed regarding the same? Is there any evidence to establish that there was such firing taking place? If yes, this should then be investigated by the police to at least establish that such circumstances existed, within which the victim escaped.

Case No. 23

Victim Details

1. Mohammad Iqbal [Enforced Disappearance]
Age: 22
Occupation: 10th Standard student
Son of: Alif Din Tass, Numani
Resident of: Zamboor, Pattan, Uri, Baramulla District

2. Mohammad Ismaiel Tass [Enforced Disappearance]
Age: 24
Son of: Alif Din Tass, Numani
Resident of: Zamboor, Pattan, Uri, Baramulla District
3. Jalal-ud-Din Tass [Enforced Disappearance]
Age: 21
Son of: Raj Mohammad Tass
Resident of: Zamboor, Pattan, Uri, Baramulla District

Alleged Perpetrators

1. Major Sharma, 9th Rajputana Rifles, Army, Camp Choolan
2. Personnel, 11 Grenadiers, Army, Camp Choolan

Case Information

In the year 1994, Mohammad Iqbal was called to the Middle School, Zamboor Pattan, by the army where a small post of the 11 Grenadiers was camped. His family sought his release on the following day and they were referred to the Choolan Camp. At the Choolan Camp they were beaten and the detention of Mohammad Iqbal was denied. For about one week, the family of Mohammad Iqbal went to find him and they were given the same treatment. After one week, his family went to the Choolan Police Post and then to the Uri Police Station and informed them of his abduction.

Following this, the 11 Grenadiers raided the house of the family of Mohammad Iqbal and threatened them of consequences for complaining to the police. These army raids continued for a period of time and the father of the victim was tortured as well.

In 1999, Mohammad Ismaiel Tass, brother of Mohammad Iqbal, and Jalal-ud-din Tass, cousin of Mohammad Iqbal, were picked up by the 9th Rajput Rifles. Their identity cards were first taken by Major Sharma and they were asked to come to the Choolan Camp and collect them. On reaching the camp, they were detained and released in the evening. On 28 December 1999, they disappeared. On that day, at around 4:00 am, two persons in plain clothes, accompanied by a few soldiers in uniform, came to their house and told them that they were required at the camp to collect their identity cards. They visited the Choolan Camp at 6:00 am. They were seen entering by witnesses. Following this, the family of the victims visited the Choolan Camp for two weeks and they were abused and beaten. During this time, they met Major Sharma who admitted that the victims had come to the camp, and collected their identity cards, but after that they left the camp. The family of the victims once again went to the Uri Police Station where a complaint was filed. Following this visit to the police station, once again the 9 Rajput personnel raided their house and threatened them and told them

not to pursue the case.

Alif Din Tass, the father of Mohammad Iqbal and Mohammad Ismaiel Tass, was threatened and tortured when he sought the whereabouts of his sons who disappeared in 1994 and 1999. Due to the torture, in 1994, he left the village for one year. He was beaten and severely tortured. Water, mixed with *chilli* was put into his eyes. He was electrocuted. Petrol was poured into his anus.

A petition was filed before the High Court in 2011 seeking the filing of a First Information Report [FIR] and investigations. A joint response was filed by the Ministry of Defence, 11 Grenadiers and the 9 Rajput Rifles before the High Court. The incidents were denied. One of the arguments given was that specific dates were not provided in the petition for the abductions, thereby rendering the entire story unreliable. While admittedly a specific date was not provided for the 1994 abduction, the 1999 abduction does have a specific date.

Further, it was submitted in the joint response that on 11 June 1999 Jalal-ud-din Tass and Mohammad Ismaiel Tass informed the check post at Choolan that they were going downhill to get some medicines. Thereafter their whereabouts were not known till July 1999 when they were apprehended by the Delhi police at Mayapuri making suspicious calls to Pakistan [where their family members had gone]. They were handed over to their family on 4 September 1999. This version of events is rejected by the family of the victims. First, if the victims were arrested by the Delhi police, proof of the same should have been provided. Second, the family of the victim states that the two victims had never visited New Delhi, and not even Srinagar.

The petition remains pending in the High Court.

According to Alif Din Tass, the reason for not filing the case before the High Court earlier was the torture that he faced, threats and intimidation, and his poor economic condition.

Case No. 24

Victim Details

Riyaz Ahmad Gilkar [Enforced Disappearance]
Age: 19
Occupation: Student, Government College Islamabad
Son of: Mohammad Subhan
Resident of: Dabruna, Islamabad District

Alleged Perpetrators

1. Captain S.S.Chauhan, First Sector, 2

Rashtriya Rifles [RR], Army, Camp Khanbal

Case Information

On 25 April 1994 there was a crackdown on two villages: Ashashajipora and Dabrunna. On that day people were gathered at Ashajipora and about five people, including Riyaz Ahmad Gilkar, were arrested and taken to the First sector, 2 RR, Camp Khanbal. The crackdown was led by Captain S.S.Chauhan, as per the information received by the family of the victim.

Subsequently, after a few days, four of the persons arrested were released. Over the following years, the family of Riyaz Ahmad Gilkar saw him at various camps. Subsequently, as well, the family of Riyaz Ahmad Gilkar received information on the victim's whereabouts but never met him.

The family of Riyaz Ahmad Gilkar filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, Section 491-A Criminal Procedure Code, 1989 (CrPC) no.78/1995]³³. On 5 November 1996 the High Court referred the matter for a judicial enquiry.

The enquiry was conducted by the Sessions Judge, Anantnag. The enquiry report notes that on 30 November 1996, the Public Prosecutor caused his appearance and associated himself with the proceedings "for a pretty long period" and during this time the petitioner appeared as his own witness in the enquiry.

Further, on 1 February 1999 fresh notices were issued to the State of Jammu and Kashmir, Director General of Police [DGP], Jammu and Kashmir, Superintendent of Police [SP] of the Criminal Investigations Department [CID], SP, Anantnag and Commandant, 2 RR. As a result of these notices, the Standing Counsel for Union of India appeared, various adjournments for filing the statement of facts were sought but no submissions were made.

On 12 July 2002, no further time was provided. For the other respondents, the Public Prosecutor filed the statement of facts on 1 December 1999. Further, it is noted that initially the petitioner or his counsel appeared but afterwards they too remained absent.

The statement of facts filed on behalf of the State of Jammu and Kashmir and its functionaries denied the arrest of the victim by the State of Jammu and Kashmir and its functionaries. It was also submitted that First Information Report [FIR] 148/1994 u/s 392, 511 RPC and 3 TADA and FIR 149/1994 u/s 3/ 25 Arms Act, 3 TADA were registered by the RR at the Anantnag Police Station on 27 April 1994³⁴. The FIR's reveal that during the crackdown by the army

³³ Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided. Information on this petition was sought again on 4 April 2014.

³⁴ Information on the FIR's was sought through RTI on 2 July 2012. By communication dated 24 August 2012, information was provided that FIR no. 148/1994 was closed by declaring the perpetrators as untraced, while FIR no. 149/1994 was chargesheeted. Copy of FIR no. 148/1994 and final report was provided.

on 25 April 1994 at Ashajipora, arms and ammunition were recovered from Manzoor Ahmad and Mohammad Iqbal. An encounter took place in which both these persons were killed. Daily Diary entry no.28 of the Anantnag Police Station on 25 April 1994 reveals that the army apprehended Manzoor Ahmad, Mohammad Shafi, Mohammad Iqbal and Riyaz Ahmad Gilkar during this search operation and some persons were killed during the encounter.

FIR no. 148/1994 states that on 25 April 1994 during a search operation personnel of the 2 RR Task Force picked up two people [Javed Ahmad Shah, son of: Ghulam Rasool Shah, and Ghulam Qadir Reshi, s/o Mohammad Ramzan Reshi]. They recovered a radio set. A guard was positioned there. The people picked up tried to snatch the rifle from the guard, and they were shot at and killed. The FIR also states that there was prior FIR no. 147/1994 u/s 302 [Murder] RPC at Anantnag Police Station filed against the army³⁵. The FIR has a notation that suggests that the case was closed by declaring the perpetrators as untraced on 9 April 2004. By communication dated 16 May 2014 from the Jammu and Kashmir Police the following information was provided: "The investigation of these cases has been closed as untraced. Unless and until the Hon'ble court admits/agrees with the the investigation of the case, the same is supposed to be subjudice before the Court of law."

Also on record is a final report that states that the army did not cooperate with the investigations, and that the action taken was to avenge the FIR no. 147/1994. No witnesses were produced by the army in their defence. Therefore, the case was closed as untraced.

FIR no. 149/1994 states that arms and ammunitions were recovered from Manzoor Ahmad Shah, son of: Mohammad Khalil Shah, Mohammad Shafi Wagay and Mohammad Iqbal Mir on 25 April 1994.

The petitioner, brother of Riyaz Ahmad Gilkar, testified before the enquiry on 9 September 1998 that Riyaz Ahmad Gilkar was abducted by the 2 RR from Ashajipora on 25 April 1994 and for 25 days his whereabouts were not revealed. Subsequently, he saw Riyaz Ahmad Gilkar many times in Army Camp Khandoora, Khanbal and Aishmuqam. In the month of May 1996 Riyaz Ahmad Gilkar was shifted to Kot Balwal and on 12 June 1996 he was lodged in Rangreth Jail, Srinagar where he remained in contact with the petitioner though the officers said that the victim was not detained there.

The enquiry also considered the documents provided

by the Public Prosecutor including the Daily Diary in which it is reflected that Head Constable Abdul Rashid on his return from the army crackdown along with his official colleagues provided information that the army had arrested Riyaz Ahmad Gilkar and others.

Based on the above the judicial enquiry concluded that Riyaz Ahmad Gilkar had been arrested by the 2 RR on 25 April 1994 and his whereabouts have not been conveyed to the petitioner.

Based on the above judicial enquiry report, the High Court on 20 July 2004, nine years after the petition was filed, found that a prima facie case was established against the 2 RR on the abduction of the victim. An order was given for an FIR to be registered by the Station House Officer [SHO], Anantnag Police Station.

No information exists on record on whether a FIR was actually registered following the High Court order.

The apparent lack of any action may also be a criticism of the High Court that should have remained seized of the matter instead of leaving it to the discretion of the Jammu and Kashmir Police.

Further, the Ministry of Defence seems to have cared very little about the High Court order, the Jammu and Kashmir Police investigations or in instituting a process for delivering justice.

The available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 25

Victim Details

Mohammad Ashraf Dar [Torture and Enforced Disappearance]

Son of: Ghulam Rasool Dar

Resident of: Lone Mohalla, Hadipora, Rafiabab, Baramulla District

Alleged Perpetrators

1. Major Sehgal, 15th Punjab Regiment

Case Information

First Information Report [FIR] no.28/1994 u/s 364 [Kidnapping/Abducting to murder], 302 [Murder] was filed at the Panzalla Police Station³⁶. The 22 May 2012 communication from the Jammu and Kashmir Police states that the case was chargesheeted and

35 Information on the FIR's was sought through RTI on 15 October 2013. By communication dated 16 November 2013 from the Jammu and Kashmir Police a copy of the FIR was provided.

36 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 22 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. By communication dated 9 January 2014 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI dated 14 November 2014.

sanction for prosecution was awaited. By communication dated 9 January 2014 it was stated that the case was “under investigation”.

The family of the victim gave a statement to the IPTK on 27 May 2014 as follows.

On 22 May 1994, Mohammad Ashraf Dar had gone to Rawoosa village, on the occasion of Eid-ul-Adha to collect donations for the local mosque at Hadipora. At around 10:00 am, Ashraf along with two other locals, namely, Fayaz Ahmed Wani, son of Hassan Wani and Zahoor Ahmed Teli, son of Ghulam Mohammad Teli were stopped by the army on the pretext of asking directions towards Yarbugh Village. They had particularly asked Ashraf to accompany them to Yarbugh. At that time, there was a crackdown going on in Yarbugh. Ashraf's associates, Fayaz and Zahoor accompanied the army to Yarbugh and were caught in the crackdown, whereas Ashraf had been taken to the house of a militant, namely, Fayaz Ahmed Ganai where he was tortured.

Two other persons, namely, Abdul Majeed Malla, resident of Rawoosa and Fayaz Ahmed Ganai's brother were also being tortured in the same house. According to Majeed's account, before torturing them the army had served them lunch. During interrogation and torture, the army kept questioning Ashraf about his identity. They kept telling him that his name was Abdullah who happened to be a militant in the MJF from Hadipora. Ashraf pleaded for his innocence and told the army that he would show them Abdullah's house, but they did not listen to him and continued torturing him. They were made to drink excessive water and were tortured with a roller. At around 6 in the evening, both Majeed and Ashraf were taken out of the house and were put into different vehicles. Ashraf's head had been covered with a Pheran, before he was moved into the vehicle.

Ashraf's family got to know about his arrest in the evening, on the same day through Zahoor Teli and Fayaz Wani. They rushed to the army camp at Hadipora and met Major Balveer. He contacted someone and informed the family that the army had not arrested Ashraf. However a soldier in the army camp told Major Balveer that the army had picked up someone from Rawoosa. Major Balveer then asked the family to visit the camp the next day. On the next day, the family waited for Major Balveer, from 9:00 am to 1:00 pm and at 1:00 pm, Major Balveer said that the case was related to his senior officer and he couldn't help them. He also said that he cannot help as Hadipora Camp was also of 15 Punjab Regiment. On the third day the family, went to the Watergam headquarters of 15 Punjab Regiment, but were not allowed to meet any senior officers, nor were they allowed to enter the camp. A Sikh soldier at the gate told them that Ashraf would be released soon. For about a month, the soldier at the gate kept telling Ashraf's family that he would be released soon. At times the soldier told Ashraf's family that he had

crossed the LOC and would return soon. His family was under the impression that Ashraf might have gotten injured and might be undergoing treatment in the army hospital, as the soldier at the gate repeatedly told them that he would return soon.

After around one week, Ashraf's father went to the Panzalla Police Station and filed an FIR. After sometime, their neighbor, Ghulam Rasool Lone, who was an employee in the Srinagar Court suggested to them that they file a case in the court. He helped Ashraf's father to file a case in the Court. The case was transferred to Handwara court and then to Baramulla Court for a Judicial Enquiry.

After more than a year, Fayaz Wani and Zahoor Teli, were called to an army camp at Bahrampora, where they were questioned about Ashraf's arrest. Ashraf's father had deposed before the District Sessions Judge, Baramulla and his statements as well as Abdul Majeed's statements were also recorded. Due to a strike for two months, the family discontinued to follow the case.

Once Ashraf's father was taken to Tragpora Camp, along with the village head. There he was questioned about the incident and was also offered compensation, which he refused, as he wanted to know about the whereabouts of Ashraf, whether he was dead or alive. To which the officers did not respond. Ashraf, Majeed Malla, and Rasheed were tortured together. Majeed was released at Laisar Village, whereas Abdul Rashid Ganai, were left at his house where he was tortured.

The FIR states that Zahoor Ahmad Teli, Fayaz Ahmad Wani and Mohammad Ashraf Dar, who were seeking donations for the construction of a mosque, were arrested in the presence of witnesses by the 15th Punjab Regiment, Army, Dangiacha Camp on 22 May 1994. They were all beaten. Zahoor Ahmad Teli and Fayaz Ahmad Wani were released but Mohammad Ashraf Dar was taken to the Dangiacha Camp, detained and severely beaten in custody. The father of Mohammad Ashraf Dar approached the camp and sought the release of the victim. The personnel at the camp denied the arrest of the victim. A person named Abdul Majid Malla, who was also in custody, was an eye-witness to the beating of Mohammad Ashraf Dar.

As per an order of the High Court of Jammu and Kashmir dated 30 May 1995, the case of Mohammad Ashraf Dar was sent to the District and Sessions Judge, Baramulla, for conducting an enquiry [this confirms what the family states in its testimony]. It also stated that in case the District Judge, during the preliminary enquiry concluded that the said individual had been killed in custody, he will get a case registered against the culprit.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for

prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was not received.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction was sought on 25 June 2004 and was awaited.

It is noteworthy that it took the Jammu and Kashmir police and Government of Jammu and Kashmir took 10 years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

Further, it needs to be ascertained whether the Jammu and Kashmir Government has at all sent the case for sanction for prosecution to the Ministry of Defence and whether the Ministry of Defence has misplaced the case file. The Jammu and Kashmir Police position of 9 January 2014 suggests that the sanction has yet to be processed.

Atleast after the 2009 affidavit by the Ministry of Defence, the Jammu and Kashmir Government should have considered even re-sending the case or clarifying when and how the case was sent.

In any case, after providing this information before the High Court of Jammu and Kashmir in 2009 and also in 1994 after the case was filed against the personnel of the army, the Ministry of Defence seems to have cared very little about the Jammu and Kashmir Police investigations or in instituting a process for delivering justice.

The available documents do not suggest that even a court-martial was conducted in this case by the army.

Case No. 26

Victim Details

Sajad Umar Guroo [Enforced Disappearance]
Son of: Ghulam Mohammad Guroo
Resident of: 157, Rose Lane, Channapora,
Chadoora, Budgam District

Alleged Perpetrators

1. Sub-Inspector [SI] Vinod Kumar, 30th Battalion Border Security Force [BSF], Camp near Neelam Cinema, Srinagar

Case Information

On 10 June 1994, the BSF was arresting youth in relation to two grenade explosions at the exhibition crossing at about 10:45 am.

Sajad Umar Guroo was picked up at about 3:00 pm on 10 June 1994 at the exhibition crossing, Jehangir Chowk, Srinagar by the 30th Battalion BSF while he was waiting for a bus with his sister Shaheena. Shaheena chased the vehicle in which the victim was abducted in an auto rickshaw.

The vehicle entered Neelam Cinema at Shaheed Gunj, Srinagar, where the BSF was camped. Shaheena could not enter the camp, which was at that time headed by SI Vinod Kumar. The victim has disappeared since.

On the same day at 6:00 pm, SI Vinod Kumar raided the victim's house and had brought the victim along with him. An extensive search was conducted but nothing was recovered.

The police filed first information report [FIR] no. 62/1994 u/s 307 [Attempt to murder] RPC, 3/5 I. Ex. Act, 3(1) TADA at the Shaheed Gunj Police Station regarding the two grenade explosions³⁷.

The Shergari Police Station entered a Daily Diary report no.19 on 15 June 1994 in relation to the lifting of the victim. By communication dated 30 November 2013 from the Jammu and Kashmir Police a copy of the closure report was provided along with information that the case was closed by declaring the perpetrators as untraced. By communication dated 22 April 2014 from the Jammu and Kashmir Police a copy of the FIR was provided. Names of militants involved and BSF personnel injured are provided.

The family of the victim approached the State Human Rights Commission [SHRC] and a final decision was delivered on 20 March 2003. Ex-gratia government relief of Rs. 1,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders] were recommended.

The family of the victim filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, HC 315/1994]. Subsequently, another petition was filed before the High Court [Original Writ Petition (OWP) 572/2004] for grant of relief/compensation. Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided. Information on petition number 572/2004 and 315/1994 was sought on 4 April 2014 as well.

The family of the victim received Rs.1,00,000 ex-gratia government relief.

³⁷ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

Before considering the SHRC decision for the purposes of analysis, a brief mention of two documents on record need be made.

On 13 May 2002, the Senior Superintendent of Police [SSP], Srinagar, wrote a letter to the Additional Director General of Police [ADGP], Criminal Investigation Department [CID] of Jammu and Kashmir Police, confirming that the victim was picked up on 10 June 1994 by the BSF and that since that date his whereabouts are not known. On 21 June 2002, the ADGP, CID, Jammu and Kashmir, Srinagar, wrote a letter [the copy on record is an unsigned document] to the Deputy Commissioner, Budgam and confirmed that the victim was picked up on 10 June 1994 by the 30th Battalion BSF. Further, the letter confirmed that the victim was not involved in subversive activities and was still missing.

The above two documents confirm the abduction, the unit responsible, the innocence of the victim and the continued disappearance. This may now be seen along with the SHRC decision of 20 March 2003. The SHRC decision was based on a 10 February 2003 report from the Crime Branch. The Crime Branch recorded statements of witnesses, including Mohammad Younis Bazaz. This witness, who was also lifted by the BSF on the same day, confirmed that he had seen the victim at Neelam Chowk, Srinagar where the BSF was stationed at a migrant house. The victim had been brought by SI Vinod Kumar.

Further, the Crime Branch concluded that the victim was not associated with any banned party. The BSF informed the Crime Branch that they had not lifted the victim. Based, it would seem purely on the submission of the BSF, and discounting the testimony of Mohammad Younis Bazaz, the SHRC concluded that, while the victim was an innocent person and was now disappeared, it could not be confirmed that he had been abducted by the 30th Battalion of the BSF.

Therefore, rather disturbingly, despite a clear conclusion on behalf of investigating agencies that the victim was abducted by the 30th Battalion BSF, and one strong eye-witness testimony that names SI Vinod Kumar, the SHRC was unable to confirm the abduction details and specifically indict SI Vinod Kumar. Similarly, the police too have closed the case as untraced.

The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Case No. 27

Victim Details

Bilal Ahmad Khanday [Enforced disappearance]
Age: 20 years
Occupation: Student [Third year, Bachelor of Science]
Son of: Ghulam Mohammad Khanday
Resident of: Sumbal Sonawari, Bandipora district

Alleged Perpetrators

1. Ghosh, Colonel [Commanding Officer], 10 Bihar Regiment, Manasbal, Safapora Camp

Case Information

The 10 Bihar Regiment, stationed at Safapora Camp, picked up Bilal Ahmad Khanday on 6 July 1994. The victim and his friends were crossing the river Jhelum, near the new bridge at Sumbal. The patrolling army arrested him near the riverbank.

The family approached the higher authorities, including the Minister of State for Home, Superintendent of Police, Deputy Commissioner Baramulla but no information about the whereabouts of the victim were given. Commanding Officer Ghosh threatened the family of the victim to not lodge any FIR in the police station. The family also approached the court and filed a petition.

The brother of the victim, Showkat Ahmad Khanday, gave the above statement to IPTK on 23 April 2015.

The documents available on file confirm the allegations of the victim family.

The State Human Rights Commission [SHRC] issued a decision on 8 October 2001. The decision begins with a summary of the complaint which includes a reference to an earlier arrest of the victim in 1992 by “security forces” but he was then released. Further, after his disappearance in 1994, the father of the victim approached the Commanding Officer of the 10 Bihar Regiment at Safapora and told him what had happened. The SHRC decision then notes that a missing report – No.7 dated 11 November 1995 – was entered by the Sumbal Police Station. Further, the police before the SHRC confirm that the victim was picked up by personnel of the 10 Bihar at Manasbal, Safapora. The SHRC recommended ex-gratia relief of Rs. 1 lakh.

Petition [HC No. 892/1994] was filed in Srinagar High Court and notice was issued on 28 September 1994. The present status of the petition is not known. Further information on this petition was sought through RTI dated 15 July 2015.

Also on file is an undated communication from Station House Officer [SHO] Police Station Sumbal to the Tehsildar, Sumbal, Sonawari. This communication states that the police recorded the statement of the

father of the victim who stated that on 6 July 1994 the victim was picked up by some unknown gunmen from his home and they took the victim with them. The father followed them till the crossing over the river when they told him to return. The police investigations could not ascertain the whereabouts of the victim.

The statement of the witness above and the SHRC decision and police investigations are credible evidence of the involvement of the army, specifically the 10 Bihar at Safapora. But, further investigations are mandated particularly on the issue of “unknown gunmen” taking the victim from home before he was apprehended by the 10 Bihar personnel

Case No. 28

Victim Details

Ghulam Hassan Baba [Enforced Disappearance]
Occupation: Imaam [Mosque priest]
Son of: Ahad Baba
Resident of: Wagad, Pahalgam, Islamabad District

Alleged Perpetrators

1. Commandant [Colonel / Commanding Officer] R. K. Singh, 9 Para-Commandos, Army, Camp Srigufwara, Islamabad

Case Information

On 7 July 1994, Ghulam Hassan Baba was picked up by Commanding Officer R. K. Singh of 9 Para-Commandos, Army, Srigufwara Camp, Islamabad and has disappeared since.

The family of Ghulam Hassan Baba filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, HC 111/1995]³⁸. The Union of India and the Commanding Officer, 9 Para-Commandos, submitted that they had not arrested the victim. The High Court ordered an enquiry on 26 November 1996 which was conducted by the Sessions Judge, Islamabad and concluded on 9 August 2002.

As per the Sessions Judge enquiry report, First Information Report [FIR] no.14/1994 was filed at the Pahalgam Police Station through the Aishmuqam Police Post on 8 July 1994³⁹. But, a reading of the FIR and final report makes it clear that FIR no. 14/1994 does not pertain to the instant case.

The only document on record for the purposes of analysis is the enquiry report of 9 August 2002.

The enquiry report begins by stating that the court issued notices to the respondents on 10 December

1996. According to the enquiry report, on 31 December 1996, the Public Prosecutor appeared and associated himself with the proceedings for a “pretty long time”, during which the petitioner testified and examined other witnesses. On 1 December 1999, fresh notices were issued to the State of Jammu and Kashmir, Director General of Police [DGP], Jammu and Kashmir, Superintendent of Police [SP] Criminal Investigation Department [CID], SP Anantnag and the Commanding Officer, 9 Para-Commandos, for the filing of statement of facts.

Consequently, Standing Counsel, Union of India appeared and sought time to file the statement of facts. The Public Prosecutor filed the statement of facts on behalf of the State of Jammu and Kashmir and its functionaries.

After being granted several opportunities to file the statement of facts the Union of India did not do so, and on 12 July 2002, no further opportunities were given. The petitioner appeared before the enquiry initially but subsequently opted to remain absent.

The State of Jammu and Kashmir and its functionaries stated that Ghulam Hassan Baba could not be traced in any Joint Interrogation Centre at Jammu or Srinagar but that a report had been lodged in Aishmuqam Police Post on 8 July 1994 that Ghulam Hassan Baba was abducted by the 9 Para-Commandos, and specifically the Commanding Officer R.K. Singh on 7 July 1994.

The petitioner examined the following witnesses:

- Mohammad Yaseen, the brother-in-law of the victim, stated that on 7 July 1994 at 5:00 pm Ghulam Hassan Baba was abducted from a shop in Kranagam village by the 9 Para-Commandos who were stationed at Aishmuqam. The abductors arrived in taxi no. JKT 1516 which developed a defect and the witness and other pedestrians were made to push the vehicle, but it would not start and was therefore brought to Aishmuqam Camp. The witness stated that he went several times to the Aishmuqam Camp to seek the release of the victim but the “military people would avoid them on false promises”. On cross-examination the witness added that a person named Mohammad Yousuf had been arrested earlier and was accompanying the victim in the vehicle that day. Mohammad Yousuf remained with him at the Aishmuqam Camp for several days and was subsequently released. Mohammad Yousuf disclosed this information in a sworn affidavit. The witness further stated that Mohammad Yousuf was now deceased.
- Salaam Baba, elder brother of Ghulam Hassan Baba, testified that the army arrested

38 Information on the petition number was sought through RTI on 2 July 2012. No information was provided. Information on this petition was sought again on 4 April 2014.

39 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. By communication dated 24 August 2012 from the Jammu and Kashmir Police a copy of the FIR and final report was provided and information was provided that the case had been closed by declaring the perpetrators as untraced.

Ghulam Hassan Baba on 7 July 1994. Further, that Ghulam Hassan Baba was not a militant but an Imaam [Mosque priest].

The petitioner [Saja], wife of Ghulam Hassan Baba, stated that on 7 July 1994 army personnel in civilian dress abducted Ghulam Hassan Baba. Since that day, she had not seen Ghulam Hassan Baba.

The enquiry also considered the affidavit of Mohammad Yousuf Sheikh which states that he had been arrested by the Commanding Officer R.K. Singh on "15 June 1994" and released on "27 April 1994". Further, that Ghulam Hassan Baba was also arrested by the same army unit. The enquiry judge found this affidavit to support the petitioner's case and concluded that Ghulam Hassan Baba was abducted by the Commanding Officer R.K. Singh on 7 July 1994 and initially lodged at the Aishmuqam Camp and then shifted.

The enquiry report clearly indicts Commanding Officer R. K. Singh but two comments need to be made:

- While it is mentioned that the FIR refers to the Commanding Officer R.K. Singh, none of the witnesses before the enquiry judge refer to him
- The affidavit of Mohammad Yousuf Sheikh, as summarized by the enquiry judge, does indict Commanding Officer R. K. Singh but the dates of his own arrest as mentioned in the enquiry report appears to be incorrectly noted by the enquiry judge.

This case serves as another example of a delayed judicial process that took seven years to indict Commanding Officer R. K. Singh.

The delayed enquiry report apparently did not result in any further action or prosecution as this case finds no mention in the official documents related to cases sent by the Jammu and Kashmir Government for acquiring prosecution sanction under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA]. Significantly, the Union of India, by choosing not to engage with the judicial enquiry, has attempted to undermine the process of justice and has displayed its non-seriousness to accountability.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 29

Victim Details

Mushtaq Ahmad Wani [Enforced Disappearance]

Age: 26

Occupation: 10th Standard student, Government Higher Secondary School, Hirri Trehgam [upto November 1993]

Son of: Abdul Sattar Wani

Resident of: Hayan, Kupwara District

Alleged Perpetrators

1. Naib Subedar Laxman Singh, 3 Grenadiers, Army, Camp Zurhama
2. Post Commandant Nikhil Tiwari, 3 Grenadiers, Army, Camp Zurhama

Case Information

On record is a letter dated 5 September 2009 from the Station House Officer [SHO], Trehgam Police Station, to the Deputy Superintendent of Police [DSP], Police Headquarters, Kupwara that provides the following information on the instant case:

- Mushtaq Ahmad Wani was picked up by some soldiers travelling in an army vehicle on 24 August 1994 as he was waiting at the Hayan bus stop.
- On 25 August 1994 a missing report was filed by Mushtaq Ahmad Wani's father at the Trehgam Police Station vide Daily Diary no.22.
- On 28 August 1994, Naib Subedar Laxman Singh filed a written report that on 27 August 1994 the 3 Grenadiers arrested Mushtaq Ahmad Wani and arms and ammunitions were recovered. Based on this report, First Information Report [FIR] no.126/1994 u/s 3 [Licence for acquisition and possession of fire arms/ammunition]/25 [Punishment for certain offences] Arms Act, 1959 was filed at the Trehgam Police Station. On the same day another written report was filed by Naib Subedar Laxman Singh at the Kralpora Police Post that Mushtaq Ahmad Wani took the army troops to a hide-out on a hill near Zurhama and then managed to escape. The investigation in this FIR was ultimately closed by declaring the perpetrators as untraced on 2 September 1997.
- On 1 September 1994, Post Commandant Nikhil Tiwari, camped at Zurhama, filed a written report at the Trehgam Police Station that firing took place near the Zurhama post with militants, one of them being Mushtaq Ahmad Wani, on that day. FIR no.133/1994 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 3/25 Arms Act was registered at the Trehgam Police Station. But, the inhabitants of the area stated that no such firing had taken place in the area on that day. Based on this information, the investigation was closed by declaring the perpetrators as untraced.
- The family of Mushtaq Ahmad Wani received Rs.1,00,000 ex-gratia government relief.

Information on the FIR's was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October

2013 for both FIRs. By communication dated 25 April 2014 from the Jammu and Kashmir Police, information related to both FIRs was provided. First, in relation to FIR no. 126/1994 a copy of the FIR was provided, along with a communication dated 5 April 2014 from the SHO, Trehgam Police Station, to the DSP, Police Headquarters, Kupwara. This communication recounts events, in part, in a manner similar to the 5 September 2009 referred to above. In the case of FIR no. 133/1994, a communication is provided along with the FIR. Further information sought through RTI dated 14 November 2014. By communication dated 10 December 2014 information was provided that 133/1994 was closed by the police on 1 September 1994.

The father of Mushtaq Ahmad Wani filed a petition before the High Court of Jammu and Kashmir [HC 1034/94]⁴⁰.

On 21 October 1997 the Principal District and Sessions Judge, Kupwara was directed to monitor investigations in relation to the disappearance of Mushtaq Ahmad Wani. On 19 November 2001, the matter was returned to the High Court with a comment that as FIR no.126/1994 at the Trehgam Police Station was closed by declaring the perpetrators as untraced there was nothing left for the court to monitor. The High Court dismissed the petition on 5 February 2002.

On 9 July 2009, the District Level Coordination Committee, chaired by the District Magistrate, Kupwara, cleared the victim's case for compassionate employment under SRO-43 [Statutory Rules and Orders]

On 25 May 2009, the Criminal Investigations Department [CID], Jammu and Kashmir wrote a letter to the Deputy Commissioner [DC], Kupwara on this case and besides providing details on the case also stated that nothing adverse was reported against Mushtaq Ahmad Wani.

The record reveals that the Jammu and Kashmir Police appear to have mechanically followed the version of events produced by the army.

Further, the Principal District and Sessions Judge, Kupwara also appears to have abdicated any responsibility in the matter by considering the matter as closed following the filing of a final closure report by the Jammu and Kashmir Police in the case.

The closure of the case by the Jammu and Kashmir Police would, as per law, require a judicial scrutiny. This does not appear to have taken place.

Further, it is clear that the armed forces have facilitated the practice of illegal detentions and

unrecorded arrests without following the standard operating procedure of handing over the arrested person to the police. This leads to an unaccountable detention followed by torture, disappearance, extra-judicial executions, fake encounters and sometimes release of victims in return for money. In this case, this illegal detention has led to the army making an unsubstantiated allegation that the victim "escaped". That there was absolute impunity for the crime of disappearance of the victim is apparent from the fact that the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 30

Victim Details

1. Mohammad Iqbal Shah [Enforced Disappearance]
Age: 15
Occupation: 10th Standard student
Son of: Mohammad Yousuf Shah, Fatima
Resident of: Wagoora, Baramulla District
2. Mohammad Ibrahim Shah [Abduction and Wrongful Confinement]
Resident of: Wagoora, Baramulla District
3. Ghulam Mohammad Mir [Abduction and Wrongful Confinement]
Age: 40
Resident of: Wagoora, Baramulla District

Alleged Perpetrators

1. Deputy Commandant M. C. Halder, 163rd Battalion Border Security Forces [BSF], Camp Kant Bagh, Baramulla District
2. Assistant Commandant J. N. Singh, 163rd Battalion Border Security Forces [BSF], Camp Kant Bagh, Baramulla District

Case Information

Mohammad Iqbal Shah was picked up on 13 March 1995 by the BSF and has disappeared since. The family of Mohammad Iqbal Shah states that on 13 March 1995, at around 7:00 am, a huge contingent of BSF personnel from the 163rd Battalion camped at Kant Bagh, Baramulla forced their entry inside the victim's house. The BSF personnel attacked the family members, beat them and enquired after Mohammad Ibrahim Shah. Mohammad Iqbal Shah resisted the actions of the BSF and he was then beaten severely. The attack continued till twelve noon. Before leaving the area, the BSF personnel picked up Mohammad Ibrahim Shah, Ghulam Mohammad Mir, a neighbour, and Mohammad Iqbal Shah. On the following morning the family of Mohammad Iqbal Shah sought to register a case, but the police refused

40 Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. Information was provided.

to do so.

The family went to the BSF Camp at Kant Bagh, Baramulla to secure the release of the three persons but the BSF personnel at the camp denied that these persons were with them. The family paid visits to other areas, including the Central Jail, Srinagar, the military and paramilitary camps at Hajin and Naid Khai but did not find the three persons.

On the intervening night of 14 and 15 March 1995 the family heard that Ghulam Mohammad Mir had been thrown at the Pampore area. On being questioned, Ghulam Mohammad Mir knew nothing about the others saying they had been separated and blindfolded. The following night, Mohammad Ibrahim Shah was thrown in an area in Islamabad District, some 40 km from where Ghulam Mohammad Mir was found. Mohammad Iqbal Shah has never been seen after 13 March 1995. The family believes that Mohammad Iqbal Shah and others were picked up based on a malicious tip-off by a person named Ghulam-Mohi-Ud-Din, who was involved with militancy in the area and who had had a scuffle with Mohammad Iqbal Shah previously.

From 13 March 1995 to date, the family of Mohammad Iqbal Shah filed four writ petitions before the High Court of Jammu and Kashmir and one complaint before the State Human Rights Commission [SHRC].

The first petition [habeas corpus petition, HCP 173/1995] was filed to seek the High Court's intervention in registering a case against the alleged perpetrators of the crime.

The High Court ordered an enquiry by the Sessions Judge, Baramulla on 16 July 1996, and based on this report which indicted the 163rd Battalion BSF for the disappearance of the victim, on 6 April 1999, more than four years after Mohammad Iqbal Shah disappeared, directed the police to file a First Information Report [FIR] against the BSF responsible for the disappearance⁴¹. The enquiry report confirms the abduction and disappearance of the victim. Further, Deputy Commandant M. C. Halder, 163rd Battalion BSF, confirmed that he was posted in Baramulla from October 1993 to October 1997. It was stated that the residence of the victim was not within his jurisdiction. Assistant Commandant J.N.Singh, 163rd Battalion BSF stated that on 13 March 1995 he was posted at the Matches Factory, Baramulla, his jurisdiction was restricted to Baramulla town, and that on that day the victim was not arrested by his battalion. The judicial enquiry did not accept this contention and

stated that the 163rd Battalion BSF would need to explain the disappearance of the victim.

Consequently, FIR no. 88/1999 u/s 346 [Wrongful confinement in secret] Ranbir Penal Code, 1989 [RPC] was filed at the Baramulla Police Station⁴². By communication dated 22 May 2012 from the Jammu and Kashmir Police information was provided that the case was under investigation. By communication dated 22 April 2014 from Jammu and Kashmir Police information was provided that the case had been closed as challaned and that the case file had been sent to Home Department for accord of sanction. Further, it was stated that sanction had not been received from the home department. By communication dated 6 January 2015 information was provided that the status remains the same.

In 1999, the family of Mohammad Iqbal Shah approached both the SHRC and the High Court. The SHRC issued its decision on 4 January 2000 where it confirmed the disappearance of the victim by the 163rd Battalion BSF and recommended compensation of Rs. 3, 00,000 to the family of the victim. Service Writ Petition (SWP) no. 1734/1999 was filed before the High Court for ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders]⁴³. The final order in this case was issued on 5 March 2005 in favour of the family of the victim. Subsequently, on the non-implementation of both orders, another application was filed before the SHRC and a contempt petition was filed before the High Court [no.130/2005]⁴⁴. The petition before the High Court was disposed off on 5 February 2008 following an agreement between the parties that the reason for delay was that the victim's family had not completed the necessary formalities for compassionate employment under SRO-43 [Statutory Rules and Orders]. The SHRC disposed off the application before it on 28 May 2002 and stated that it could not implement its own recommendations.

On 13 March 2002 the family of Mohammad Iqbal Shah was provided with ex-gratia government relief of Rs.1, 00,000.

The third petition [Original Writ Petition (OWP) 553/2001] before the High Court was filed in order to accelerate the process of sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA]. The Union of India and the alleged perpetrators denied the allegations. The court issued an order on 4 September 2004

41 Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Information was provided.

42 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

43 Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. Information was provided.

44 Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. Information was provided

disposing of the petition by stating that the request and subsequent grant of the sanction was the prerogative of the State⁴⁵.

On 26 June 2000 the Director General of Police [DGP], Jammu and Kashmir informed the Jammu and Kashmir Home Department that investigations had revealed the involvement of the alleged perpetrators in the crime in question. The Commandant of the 163rd Battalion BSF had been requested to produce the alleged perpetrators before the investigating agency.

On 24 May 2001, the Senior Superintendent of Police [SSP], Baramulla informed the Assistant Commissioner, Baramulla that a charge sheet had been produced in the court against the accused BSF personnel and the case had been sent to the Government for seeking sanction for prosecution.

In 2006 the family of Mohammad Iqbal Shah filed another petition before the High Court seeking damages of Rs. 20,00,000. This petition was disposed off, as per the family of the victim, due to the non-appearance of the advocate.

The Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecution under AFSPA, stated on 6 September 2011 in relation to this case that on 9 August 2006, the Ministry of Home Affairs declined the grant of sanction.

The family of Mohammad Iqbal Shah also gave a statement to the IPTK on 13 March 2012.

The SHRC issued its decision in the matter on 4 January 2000, basing itself on a report by the Superintendent of Police [SP] of Baramulla, and found that Mohammad Iqbal Shah, and two other persons, were lifted by the 163rd Battalion of the BSF and confirmed the custodial disappearance of Mohammad Iqbal Shah.

Further, an enquiry report submitted by a committee constituted in pursuance of an order by the District Magistrate, Baramulla, concluded on 31 October 2001 that Mohammad Iqbal Shah had been abducted and went further to presume his death and stated that "his dead body has been disposed off somewhere". The report also found that the alleged perpetrators were involved in the abduction and subsequent disappearance. Further, the police investigations confirmed the role of the alleged perpetrators and produced a charge sheet before the court.

Notwithstanding, the above enquiries and conclusions, the Ministry of Home Affairs declined sanction for prosecution without specifying the reasons. Further, it is noteworthy that it took the Jammu and Kashmir Police, Government of Jammu and Kashmir and Ministry of Home Affairs 11 years to investigate and process the case for acquiring

sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice. In fact, the FIR was filed four years after the event and that too only on the intervention of the High Court. Further, it appears that despite sanction having been declined on 9 August 2006, as noted by the Government of Jammu and Kashmir, the Jammu and Kashmir Police as of 22 April 2014 have no information of the same. As a consequence, no final report has been filed before the court.

The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir. No information was provided. The IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

Mohammad Iqbal Shah continues to be disappeared, and the alleged perpetrators have not been prosecuted despite the evidence on record against them.

Case No. 31

Victim Details

Ghulam Nabi Bhat [Enforced disappearance]
Age: 29
Occupation: Business
Son of: Mohammad Subhan Bhat
Resident of: Watapora, Bandipora district

Alleged Perpetrators

1. PP Singh, Special Operations Group [SOG], Jammu and Kashmir Police
2. Ajaz Khan, Special Operations Group [SOG], Jammu and Kashmir Police

Case Information

The victim was suffering from Leukemia [blood cancer]. He was arrested by the security forces and subsequently disappeared in their custody. He was arrested by the SOG on 29 April 1995 from his provision store at Soura. Since he was a cancer patient, he had to go for regular check-ups at the Radiation Oncology department of Sher-i-Kashmir Institute of Medical Sciences [SKIMS] but it was virtually impossible for him to visit the hospital. Thrice a week, he opened a shop near the institute. SOG personnel belonging to Air Cargo unit raided his shop on the morning of 29 April and bundled him into a Gypsy. After a lapse of about two hours, the SOG raided the institute but without any recovery of arms or ammunition. Ghulam Nabi had brought the SOG to SKIMS to show his treatment file lying in the oncology department. Instead, he was thrashed in front of the

⁴⁵ Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. Information was provided

doctors and later taken along in a moribund condition. When the family went to file an FIR regarding the same, the concerned police station refused to file it saying, "we cannot take cudgels with the SOG". A friend of the victim is witness to his abduction by the alleged perpetrators.

The victim's arrest came as a severe setback for the family and his mother died exactly a year after his enforced disappearance.

The family was unsuccessful in locating him even though they searched extensively. On *Eid* in 1996, the family visited the PAPA 2 interrogation center but Ghulam Nabi Bhat couldn't be located.

The family finally approached the court and fought the case for about one year. The court recommended an ex-gratia of relief of Rs. 1 lakh but the family refused to accept the relief, as they wanted the return of Ghulam Nabi Bhat

The brother of the victim, Ghulam Mohi-ud-din Bhat, gave the above statement to the IPTK on 8 May 2015.

The allegations regarding the abduction and disappearance are strong. But, the allegations against the alleged perpetrators require further corroboration and a statement from the eye-witness [friend of the victim] – identifying the alleged perpetrators – would be important. Nonetheless, this statement does serve as evidence against the alleged perpetrators subject as always to further investigations.

Case No. 32

Victim Details

Javaid Ahmed Bhat [Enforced disappearance]
Age: 16
Occupation: Carpet work
Son of: Bashir Ahmed Bhat
Resident of: New Colony, Soura, Srinagar district

Farooq Ahmed Shalbab [Enforced disappearance]
Age: 20
Occupation: Family business
Son of: Ghulam Ahmed Shalbab
Resident of: Salmania Colony, Lane 2, Upper Soura, Srinagar district

Tariq Ahmed Rather [Enforced disappearance]
Son of: Ghulam Nabi Rather
Resident of: New Colony, Soura, Srinagar district

Alleged Perpetrators

1. RS Raina, 22 Rashtriya Rifles[RR], Machil Army Camp

Case Information

The father of victim 1, Bashir Ahmed Bhat, gave the below statement to the IPTK.

At around 7 am on 14 June 1995, Javaid went for his routine work to his neighbor's house where he used to wash carpets. While leaving, he told the interviewee that he would go to buy books after work, as he had passed his matriculation exam only three days ago. When he left in the evening to buy them, he also took a pair of scissors along to get its blades sharpened. He was going to Batmaloo.

However, the interviewee later heard [from one of Javaid's friends] that Javaid had gone across the border to Pakistan with some other boys from Nawa Bazar. Javaid's friend told him that they had planned to assemble at Jamalatta, from where they would go across. But then the interviewee visited Beta Kachur's [chief of Jamiat-ul-Mujahideen] house, where Beta told him that he had sent a few boys across a few days ago, however, he was unaware if Javaid was with the group or not. It was Beta Kachur who was sending them across. They had a guide with them who would help them cross the border. The guide took them to Doondi Machil. At Machil, the guide said that he would get food for them. They were waiting for the food but the guide didn't return. When the guide didn't come back, they decided to return but on their way back the army traced them and fired at them. They tried to escape, but 27 boys were eventually busted. One among them was killed; 15 were released later and 11 just disappeared.

The interviewee heard that the guide was one Majeed Gujjar [resident of Kalaroos] and maybe he had connections with the army and, probably, he only informed them about the boys [interviewee thinks so because he kept the boys waiting for food and didn't return].

RS Raina was the commanding officer of 22 RR, Machil camp and he had arrested the boys. [Interviewee is unaware as to whether Javaid and the other boys were going across of their volition or were they being forced]. One of the boys, amongst those disappeared, was Altaf Hafiz; he was released later, at Malaysia [near Tulsī Bagh, Srinagar]. He later told the interviewee about the entire incident with the army. According to Altaf Hafiz, When 22 RR arrested them they were kept in custody for one day after which they were shifted to the SOG camp in Zeangil. Manhas was the SP there. Only 15 boys were shifted to Zeangil camp and eleven boys were taken in a truck. Altaf did not know where they were taken. When Altaf was in Zeangil camp, he somehow informed his family, as a result of which Altaf's family visited him in the camp. There he told his family that there were three more boys of Soura but they had been taken somewhere in a truck. Then Altaf's family told this to Javaid's family.

Thereafter, in 2006, the family visited Zeangil camp, where SP Manhas said that Javaid and Tariq were not in his custody. SP Manhas then informed them about

Chairkoot camp and gave them a permission slip to enter that camp, where Dalgeet Singh was the major. But Javaid and Tariq were not there either.

Then after some time Ghulam Rasool Sofi [of National Conference] approached the interviewee and said that he had connections with some army personnel in Badami Bagh. He then told Javaid's father that some boys had been kept in the Badami Bagh Cantonment, but the army personnel were demanding Rs. 50000 to release any boy.

The next Sunday, Ghulam Rasool, Ghulam Nabi Rather and the interviewee went to the Badami Bagh Cantonment. Some families there were returning after meeting their disappeared ones. The interviewee asked Ghulam Rasool to check there. The army had a list of all those who had disappeared but were now in Badami Bagh. The officer who had it was a Muslim [but interviewee does not know his name]. They asked him to check the list for the victims' names. The names of all three boys who had gone missing from Soura were on that list – that of Javaid, Tariq [son of Ghulam Nabi Rather], and Farooq Ahmed Shalbab [son of Ghulam Ahmed Shalbab]. They were given permission to meet them.

But as soon as they entered the Cantonment, they were stopped and told that the boys were not there. They insisted and requested the army personnel to let them meet the boys but they outrightly denied their presence in the camp.

Sometime later, Abdul Khaliq, Beta Kachur's father, visited PAPA 1 to meet his son, where the latter told his father to inform Javaid's family that he was also in PAPA 1. Abdul Khaliq did the same, after which, the family visited the Batmaloo Control Room to seek permission to enter PAPA 1. They were given the permission slip, however, as soon as they reached there, they did not let them enter and denied the presence of the boys. Beta Kachur was himself threatened inside PAPA 1 for sharing this information with outsiders.

Later, the family filed a petition in the J&K High Court, which forwarded it to a Kupwara court for enquiry on 1 April 2004. The latter ordered RS Raina to be present and remain available for whenever the court might need him. In the Kupwara court, Raina was given the choice to either proceed in the cases as a civil matter or get it tried by an army court. He chose to be tried in an army court. The family does not know what happened to Raina thereafter, as they never visited the army court.

The family of Javaid then filed a case with the SHRC, where they won the case and received ex-gratia relief of Rs. 1 lakh and Rs. 4 lakh instead of an Statutory Rules and Orders [SRO 43] [compassionate employment] job appointment.

The father of victim 2, Ghulam Ahmed Shalbab, gave

the below statement to the IPTK.

On 14 June 1995, Farooq told the interviewee that he needed money for submitting fees for his 10th standard examination form. At around 8 am, he left for the Jammu Kashmir Board of School Education. He had left his studies for the past 2-3 years but he had said that he wanted to resume them.

Farooq was religious and was associated with the "Allah Wale" group. He kept a long beard and was engaged in the family business. He left home but did not return. The family thought that he would be at their neighbors' shop at Lal Chowk. But he didn't return the entire day. The next day they searched for him all over Srinagar.

Later, through Javaid's family, they came to know that the boys were planning to go across but were arrested on their way at Doondi Machil by 22 RR. Another boy, Altaf Hafiz, was arrested along with Farooq. He was kept in the SOG camp Zeangil, Kupwara. Altaf somehow managed to inform his family about his presence in Zeangil camp, after which they went to visit him. During that meeting, Altaf told his family about the other three boys from Soura – Javaid Ahmed Bhat, Tariq Ahmed Rather and Farooq Ahmed Shalbab; they had been arrested along with him but taken elsewhere. Altaf said that there were 27 boys who been arrested – 15 of them were kept in Zeangil camp under the custody of SP Manhas and 11 were taken in an army truck that was covered with tarpaulin.

When Altaf's family informed Javaid's father, he in turn informed the interviewee and Tariq's father that 22 RR had arrested them all on 26 June, and that Commanding Officer RS Raina was involved. They were kept in Machil camp for just one day under the custody of RS Raina where after 15 boys were shifted to Zeangil camp and 11 disappeared. Altaf was among the 15 boys whereas Javaid, Tariq and Farooq were amongst the 11 who had disappeared. Then, in August 1995, Farooq's family went to Zeangil camp, Kupwara. At the camp, they met SP Manhas. He didn't allow the family to talk and just said that only 15 out of 27 boys had been shifted to his camp. Suspecting the interviewee's brother-in-law Mohideen Kindoo, Manhas arrested him. 3-4 days later, the family went along with Ghulam Rasool Sofi to the Zeangil camp. Manhas then asked them to produce bail for the release of Mohideen from his custody. Accordingly, the family got the bail order from the Jammu and Kashmir High Court. After producing it to Manhas, he released Mohideen.

Then the interviewee filed an FIR in Soura Police Station, where the SHO or DSP was Rasheed Billa. He was known for his cruelty. But he didn't do anything wrong with them. But the FIR that they had filed has disappeared. Even at the time of its filing, the family was not given a copy. They did not dare to ask for it either because of Rashid Billa's notoriety. Later, they denied that any such FIR had been filed, even

though Ghulam Rasool Sofi was present along with the family inside the Police Station.

Later, Ghulam Rasool Sofi somehow came to know that Farooq and the other two boys of Soura were in Badami Bagh Cantonment. He informed the families of Javaid and Tariq. Consequently, Bashir Ahmad Bhat and Ghulam Nabi Rather procured permission slips to enter Badami Bagh, where there was a list of disappeared persons; the names of all three boys from Soura were mentioned there. But when the family, along with Bashir Ahmed Bhat and Ghulam Nabi Rather entered, army personnel denied their presence.

Then the interviewee lodged an FIR in Soura Police Station again. His son Tariq Ahmad Shalbab followed the case and received Rs. 1 lakh as ex-gratia relief. They have not received a job appointment under SRO 43. The case is in the Deputy Commissioners office currently. They said that the meeting to decide on the appointment would be held in September 2014. However, due to the floods, that didn't happen. The family visited the office 2-3 times since then but the meeting has still not been held.

On file is First Information Report [FIR no. 12/1999] under sections 364 [Kidnapping /Abducting to murder], 346 [Wrongful confinement in secret], 302 [murder] Ranbir Penal Code [RPC] dated 12 January 1999 at Kupwara police station. The FIR states that a case of custodial disappearance has been ordered to be filed by the High Court against the alleged perpetrator. Information was sought through RTI dated 15 October 2013. By communication 24 December 2013 from Jammu and Kashmir Police a copy of the FIR was provided. By communication dated 25 April 2014 a police communication was also provided that confirmed that the case had been chargesheeted against the alleged perpetrator. Separately, a RTI was filed on 18 December 2012 to Jammu and Kashmir Police regarding custodial killings in Jammu and Kashmir between 1989 and 2012. By communication dated 17 January 2013 information was provided that the case was challaned against the alleged perpetrator on 1 August 2001. More recently, further information was sought on this FIR through RTI dated 14 November 2014. By communication dated 10 December 2014 a copy of the FIR and chargesheet were provided.

The High Court information that led to the filing of the above FIR is that the High Court, in writ petition: HCP 116/1996 [Information on the petition number was sought through RTI on 4 April 2014] and 118/1996 [Information on the petition number was sought through RTI on 4 April 2014], ordered judicial enquiry. Judicial enquiry by District and Sessions Judge Kupwara confirmed that the two victims were taken in custody on 26 August 1996. 30 December 1998 order of the judicial enquiry was for registration of the case to

deal with the disappearance against the alleged perpetrator. Progress report of investigation was to be submitted to the High Court. It seems that following this the High Court did order for a FIR to be filed.

On file is an order by the Judicial Magistrate Kupwara dated 24 June 2004 handing the case file of the current matter over to the army for court-martial because the army has chosen to exercise the court-martial option under the Army Act.

On file is a list of the suspects lodged in Badami Bagh Cantonment dated 6 April 1996 and the names of Javaid Ahmad Bhat and Farooq Ahmad Shalbab are on it. But, Javaids name appears to have been struck off whereas there is a tick next to Farooq Shalbab's name.

The testimony in the above case, High Court proceedings, and the police investigations themselves have indicted the alleged perpetrator. But, it appears that no court-martial has been concluded.

Case No. 33

Victim Details

Mushtaq Ahmad Chacha [Enforced Disappearance]

Age: 20

Occupation: Labourer

Son of: Ghulam Mohammad Chacha, Noora Sabi

Resident of: Ali Kadal, Mehrajgunj, Srinagar

Alleged Perpetrators

1. Commandant Dinesh Kotwal, 41st Battalion, Border Security Force [BSF], Camp Karan Nagar
2. Deputy Commandant Sardar Rai Singh, 41st Battalion Border Security Force [BSF], Camp Karan Nagar
3. R. S. Khoswa, Head, General Staff, 41st Battalion Border Security Force [BSF], Camp Karan Nagar
4. Superintendent of Police [SP], Criminal Investigation Department/Counter Insurgency Kashmir [CID/CIK], Srinagar, Jammu and Kashmir Police

Case Information

Mushtaq Ahmad Chacha was picked up on 9 July 1995 by the personnel of 41st Battalion BSF at around 11:00 am. The family of Mushtaq Ahmad Chacha states that they met the victim subsequent to his abduction and since then he has disappeared.

The family of the victim filed a petition before the High Court of Jammu and Kashmir in 1996 [Section 491 Criminal Procedure Code, 1989 (CrPC) petition no. 197/1995, a habeas corpus petition]⁴⁶. In reply

46 Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. No information was provided. Information on this petition was sought again on 4 April 2014.

to this petition, the State of Jammu and Kashmir and the police claimed that Mushtaq Ahmad Chacha was in fact arrested on 12 July 1995 in a case relating to First Information Report [FIR] no. 4/1995 filed by the Counter Insurgency Kashmir [CIK], Srinagar and that Mushtaq Ahmad Chacha subsequently escaped on 15 July 1995 for which another FIR was filed at Baghyas Police Station, Srinagar as FIR no. 92/1995 u/s 307 [Attempt to murder], 216 [Harbouring an offender] Ranbir Penal Code, 1989 [RPC]⁴⁷. This FIR was filed on 23 July 1995, eight days after the alleged escape of the victim from custody. By communication dated 22 April 2014 from the Jammu and Kashmir Police information was provided that this FIR was filed at Safakadal [Police Post Bagyas]. Further, that the investigation of the case was earlier concluded as untraced on 26 March 1996 but reopened under the directions of the Additional Sessions Judge, Srinagar. The investigations of the case have been concluded as chargesheeted but the chargesheet in the case has yet to be submitted.

Also on record is an order from the District Magistrate, Srinagar addressed to the Commandant, Joint Interrogation Centre [JIC], in-charge, Sanatnagar to allow the victim's [named as: Mushtaq Ahmad Shigan, son of Ghulam Ahmad Shigan, resident of Boniyarbal, Maharaj-Gunj, Srinagar] family to meet him. This order appears to be dated 7 September 1995. This order states that the victim was arrested on 9 July 1995. While there are certain variations in the name of the victim and certain other personal details in this order, it appears to be in relation to the victim as this order was also considered in a subsequent enquiry ordered by the High Court. There is also on record a Public Safety Act, 1978 [PSA] order of 27 September 1995 against the victim by the District Magistrate, Srinagar.

Based on the petition filed before the High Court, the Court ordered an enquiry by the Additional District and Sessions Judge, Srinagar on 25 February 1997. This enquiry was concluded and a report submitted on 20 July 2000.

The final decision of the High Court was issued on 14 May 2002. Rs. 1,50,000 was ordered as compensation. It was left to the Union of India and the Government of Jammu and Kashmir to recover the amount of compensation from the persons responsible, particularly the SP, CID/CIK, Srinagar. The money was to be paid within three months, subject to extension on sufficient cause.

A criminal case was to be registered in case the disappearance was not covered by the existent FIRs and it was to be taken to its logical conclusion as far as possible within four months.

The family of the victim received Rs. 1, 50,000 from the BSF following the High Court order. But, the family has not received any compassionate employment under SRO-43 [Statutory Rules and Orders].

The family of the victim also gave a statement to the IPTK on 28 February 2012.

At the outset, before considering the enquiry report of 20 July 2000, the sequence of events may be briefly considered. First, while the State of Jammu and Kashmir and the Jammu and Kashmir Police claim that the victim was arrested on 12 July 1995, the order of the District Magistrate, Srinagar of 7 September 1995 places the date of arrest as 9 July 1995. Second, while it is claimed that the victim escaped on 15 July 1995, the District Magistrate's order of 7 September 1995 allowing for an interview with the victim and the PSA order of 27 September 1995 would suggest that in fact the victim did not escape and at least until 27 September 1995 remained in custody. The enquiry report by the Additional District and Sessions Judge, Srinagar may now be considered.

Before the judicial enquiry, the police [as represented by SP, CID/CIK, Srinagar] stated that the victim was arrested on 12 July 1995 and was detained at the Joint Interrogation Centre [JIC], Fair View, manned by BSF personnel. The police further stated that during interrogation the victim disclosed the names of 2/3 militants in various hideouts in Srinagar. Therefore, on 15 July 1995 the victim was taken out of the lock-up by BSF personnel and taken to the Kani Mazar area in Srinagar city. Subsequently, in that area at about 9:15 pm there was heavy firing and the victim escaped. This was reported to the police by the BSF. Subsequently, an order under the PSA was requested and issued on 27 September 1995 but unexecuted as the victim had escaped. The BSF also presented its version before the enquiry. The BSF stated that the victim was arrested on 9 July 1995 and was taken to the CIK on 10 July 1995 where an FIR was lodged and then was brought back to the TAC Headquarters of the 41st Battalion BSF. The rest of the BSF version of events closely matches that placed before the enquiry by the police in relation to the events of 15 July 1995 and the escape of the victim. The BSF then states that the area was cordoned off till 11:25 pm to trace and nab the victim. On subsequent days as well efforts were made to find the victim. This continued until 23 July 1995 when finally the FIR was filed.

In addition to the contradictions between the versions of the BSF and the police regarding the date of arrest, and the difficulty with accepting the version of events on 15 July 1995 in light of the orders of the District Magistrate of 7 and 27 September 1995 and the fact that an FIR for an incident alleged to have happened on 15 July 1995 was only filed eight days later on 23 July 1995, the following relevant witness testimony

47 Information on both FIRs was sought through RTI on 5 May 2012. By communication dated 2 June 2012 from the Jammu and Kashmir Police a copy of FIR no.92/1995 was provided. Further information sought through RTI on 15 October 2013 on both FIRs. Further information on FIR no. 4/1995 sought through RTI dated 14 November 2014.

and findings of the Additional District and Sessions Judge, Srinagar suggest that the family's version of events is in fact accurate, and that the victim did not escape and was disappeared in the custody of the BSF:

- Witness Ghulam Qadir Bhat confirmed that the victim was picked up on 9 July 1995 around 11:00 am by BSF personnel of the 41st Battalion and was taken first to a bunker, and then to Karan Nagar. The witness further testified that people assembled at Karan Nagar demanding that the victim be released. The witness was not cross-examined.
- While being uncertain about the year when the event took place, but suggesting that it was two years prior to his testimony [although it is unclear when the witness testified], witness Ghulam Qadir Sheikh confirms the version of events provided by Ghulam Qadir Bhat, including the time of the arrest as being around 11:00 am or 12 noon in the month of July. The witness was not cross-examined.
- The father of the victim also testified to the arrest of his son and him being taken to the BSF Camp at Karan Nagar on 9 July 1995. Crucially, he testifies that “they” [it is unclear who else the witness is referring to] met the victim in September or October 1995 at the BSF Camp at Karan Nagar and subsequently met him on two more occasions in October 1995 at the Karan Nagar Camp. He testified that he was accompanied by his wife: Noora [it is unclear whether the witness suggests that his wife accompanied him on all three occasions]. Further, he stated that he ran a shop at the Kani Mazar crossing and that there was no firing in the area in 1995 or 1996, and particularly between April and October 1995. The witness also testified that the “Deputy Commissioner told him that he should not pursue cases in Courts and if he does so he will be paid Rs. 5,00,000 and will be given a shop also”. The victim was cross-examined, but from a summary provided in the enquiry order, no damage appears to have been done to his testimony.
- Witness Noora Sabi, mother of the victim, stated that the victim was arrested two and a half years prior to the date of her testimony [it is unclear when the witness testified] and that she met him in October 1995, along with her husband, at the BSF Karan Nagar camp. She also testified that she met her son on two occasions at the Karan Nagar camp following the supposed date of his escape, i.e. 15 July 1995. The witness's testimony, during the examination in chief, on meeting her son, matches the account of her husband in most respects except that her husband is unclear whether the first meeting took place on September or October 1995. But, on cross-examination, she testified that “they” met the

victim “in the autumn of 95 at Karan Nagar on two times”. Therefore, a minor discrepancy exists following her cross-examination.

- Witness Assad Kalwal, a shop keeper at Kani Mazar, stated that in “these three years there was no firing in Kani Mazar either at the night or during the day”. He also testified that the victim was arrested by the BSF and stated that “when they were going in the camp they were asking them to come on a particular day, then they won't allow them to meet him”. This appears to be a reference to the family of the victim attempting to meet with the victim, but the witness does not provide specific details. The witness also stated that the victim was “never released nor brought to P/S [Police Station]”. On cross-examination, the witness stated that the victim was arrested at Ali Kadal. He stated he saw him being arrested at about 10/10:30 a.m., which closely matches with the time of arrest as testified to by other witnesses. But, the witness does not remember the date of arrest. He also testified that he does not know the battalion number of the forces who executed the arrest and that “to him BSF and Army means same thing”. But, he also states that “the petitioner's son was arrested by BSF. As they put up there they know it was BSF who arrested him”. Therefore, on cross-examination, while the witness's evidence is not absolutely clear on his ability to identify the forces who arrested the victim, his evidence could be corroborative of the fact that the victim was arrested by the BSF.
- Witness Ali Mohammad Magloo, posted at the Safa Kadal Police Station, testified that a FIR [no. 92/1995] was filed by the BSF headquartered at Karan Nagar. The witness testified that a report was also submitted by the BSF on the incident which states that the initial arrest of the victim was on 9 July 1995. Crucially, on cross-examination, the witness testified that the BSF personnel of the 41st Battalion did not produce the victim at the Police Station anytime after his arrest.
- Witness A.S. Bali, Commandant of the 12 Battalion Jammu and Kashmir Armed Police, posted from 1994 to 1995 as Additional SP, CIK, stated that the victim was always in the custody of the BSF. The witness also stated that “under law the custody of a person after arrest is given to the Police in which the case is registered” but he did not follow this up with the BSF as “his duty was of a supervisory nature”.
- Witness Sardar Rai Singh, Second in Command at the 41st Battalion BSF at Karan Nagar, testified that the victim was arrested on 9 July 1995. On interrogation he informed the BSF of the hideouts of certain militants at Kani Mazar. The witness was ordered by the Commandant Dinesh Kotwal to conduct a raid

on 15 July 1995 and he was part of the raid. The witness then described the firing that took place at Kani Mazar and the escape of the victim. Attempts were made to locate the victim. This was around 9:00 pm to 10:30 pm. On cross-examination, the witness stated that the victim was taken to the police, but not by him personally, to seek the remand of the victim. Further, he stated that the interrogation of the victim was carried out by the Head of the General Staff, R.S. Khoswa. He also stated that he never allowed the family of the victim to meet with the victim in October 1995 and stated that the matter was within the "competence of Commandant".

- Witnesses Raj Kumar, Rajender Singh, Nirmal Singh and four other members of the raid conducted testified to the incident of 15 July 1995 in a manner similar to witness Sardar Rai Singh. But, on cross-examination, witness Nirmal Singh stated that the victim was never taken to the Magistrate. He also testified that "the parents and other relatives of Mushtaq Ahmad Chacha used to come to the camp for meeting" the victim, but he did not provide further details except to deny knowledge of any visits in October 1995. Witness Rajender Singh testified that this incident took place on 19 July 1995 [which may be a typographical error and would need to be ascertained by checking the original enquiry records].
- Witness B. B. Vyas, the Deputy Commissioner Srinagar, and the person who issued the PSA order of 27 September 1995 testified that he had "presumed" that the victim was in police custody when he issued this order based on the police dossier before him, which would strongly suggest that the victim remained in custody at the date of the order.

An interesting feature of this case is the manner in which the State, and Jammu and Kashmir Police, and the BSF have taken opposing positions on the issue to deny any blame in the incident. The original position of the State and police was that the victim was in their custody till 15 July 1995, but subsequently, at the closing of the enquiry they argued that victim was never in their custody, but instead in the custody of the BSF. The BSF claims that the victim escaped from their custody on 15 July 1995, and using the order of the District Magistrate of 27 September 1995, suggests that at some point he returned to the custody of the police.

The enquiry, based on the above evidence, concluded that:

- The victim was arrested by the 41st Battalion BSF on 9 July 1995 at Ali Kadal
- The version of the BSF of the events of 15 July 1995 "apparently seems to be a

fabricated" as no FIR was immediately lodged. Further, while the BSF claims that searches for the victim were carried on subsequent days, the evidence before the enquiry does not suggest the same. Finally, witnesses have testified that there was no firing in the area at the alleged time period of the incident.

- The conduct of the police is highly questionable, especially in light of the District Magistrate order of 27 September 1995 that suggests the victim was in police custody. "The respondent no.3 has conducted himself in the present case in utter violation of the law on the subject. He seems to be mainly responsible for the custodial disappearance..." The respondent no. 3 was the SP, CID, CIK, Srinagar.
- The Deputy Commissioner, Srinagar "also seems to have acted mechanically" in passing the PSA order.

The observations made in the final decision of the High Court may now be considered. The High Court observed that "Obviously the stand of the BSF and State Police is self destructive to reveal custodial disappearance of Mushtaq Ahmed Chacha in circumstances not admittedly explained or brought to light. Their conduct and actions have violated law as per evidence recorded, fact-situation and circumstances of the case. The conclusions of the enquiry officer cannot be said to be unreasonable or not based on material/evidence. The attempt on the part of the State Police and the BSF to cover up or hush the matter is writ large on record. The only conclusion to be drawn is that Mushtaq Ahmed Chacha has disappeared while in physical custody of the respondent No.3, the main and chief culprit in the matter."

An analysis of the entirety of the evidence clearly points to the following conclusions:

- The victim was arrested by the 41st Battalion BSF on 9 July 1995 and taken to the Karan Nagar Camp
- Based on the evidence of Ali Mohammad Magloo, A.S. Bali and Nirmal Singh, the victim was never brought to the police station nor to a Magistrate
- There was no firing at the Kani Mazar area on 15 July 1995 and the victim did not escape on that date. This is based on the orders of the District Magistrate, and the evidence of the family of the victim that they met with him in October 1995.
- The Commandant of the 41st Battalion BSF at Karan Nagar, Dinesh Kotwal, Sardar Rai Singh, Deputy Commandant and the person apparently responsible for the interrogation of the victim, R.S. Khoswa, Head, General Staff, subject to further investigation/information, would appear to be most answerable for the

- arrest, denial of basic rights and disappearance of the victim in their custody.
- In addition, and if indeed, as per the District Magistrates order of 27 September 1995 suggests, the victim was in police custody, the police would also be answerable.
- While the enquiry appears to hold the State and police primarily responsible for the custodial disappearance, while also stating that the BSF must share blame, a reading of the entire record would more strongly suggest and implicate the BSF in the custodial disappearance.
- B. B. Vyas, the then Deputy Commissioner, Srinagar, cannot escape culpability in the disappearance of the victim. As according to the family of the victim, he was responsible for threatening and intimidating the family of the victim to withdraw the case, besides he also showed criminal negligence while passing the detention order. Further, the PSA order of 27 September 1995 confirms that the victim was alive, and in the custody of the State in the "Addl. lock-up fair-view" and orders that he be further detained for twelve months at the "Sub jail Rangreth". B. B. Vyas can therefore not escape culpability in the matter as his intimidation of the family and his orders of 7 September 1995 and 27 September 1995 when seen together point to his possible involvement in the cover up of the case.

Despite the passage of 17 years it appears that no progress has been made in this case. The police, in their 22 April 2014 communication, state that investigations have been concluded but chargesheet has yet to be submitted. No Court-Martial appears to have been conducted as the IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir and no information was provided. Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir and no information was provided.

Case No. 34

Victim Details

Mohammad Saleem Zargar [Enforced Disappearance]

Age: 43

Occupation: Contractor

Son of: Ghulam Mohammad Zargar

Resident of: Akramabad, Doda

Alleged Perpetrators

1. Major Bakar Singh, 10 Rashtriya Rifles [RR], Army
2. Major Rajesh, 10 Rashtriya Rifles [RR], Army
3. Havaladar Jagdish, 10 Rashtriya Rifles [RR], Army

Case Information

The residence of Mohammad Saleem Zargar was very close to the 10 RR Camp. As one of the relatives of Mohammad Saleem Zargar was a militant, their residence was under continuous surveillance. As Mohammad Saleem Zargar was a contractor, the personnel of the 10 RR would often demand building material free of cost from him.

On 14 September 1995, when Mohammad Saleem Zargar was asked to provide material free of cost, he refused. At 8:15 pm that night, RR personnel wearing masks and led by a person named "Bakar", an Officer of the camp, entered into the residence of Mohammad Saleem Zargar, broke the household goods, windows and then abducted Mohammad Saleem Zargar. As this was happening, the Mohammad Saleem Zargar's sister caught hold of one of the masked persons and identified him as Jagdish from the 10 RR. The soldiers informed the family of Mohammad Saleem Zargar that he was needed to accompany them to Bhagwah to show them the way. The victim has disappeared since.

The names of the alleged perpetrators, according to the family, vary on different accounts. In the petition filed in the High Court of Jammu and Kashmir, reference is made to an officer named "Bakar" and a person from the 10 RR "Jagdish". In a separate, unsigned, statement given to the IPTK, reference is made to Major Bakar Singh, Major Rajesh and Havaladar Jagdish. In the rejoinder to the State Human Rights Commission [SHRC], also appended to the petition before the High Court, reference is made to: Major Rajesh, Prabakar and Havaladar Jagdish.

First Information Report [FIR] no.114/1995 u/s 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] and 3 [Licence for acquisition and possession of fire arms/ammunition]/25 [Punishment for certain offences] Arms Act, 1959 was filed at the Doda Police Station⁴⁸. By communication dated 15 June 2012 from the Jammu and Kashmir Police it was confirmed that the case was closed by declaring the perpetrators as untraced. Also, on record is a letter sent from the Senior Superintendent of Police [SSP], Doda to the Inspector General of Police [IGP], Jammu that confirms the version of the family of Mohammad Saleem Zargar and states that the case was closed by declaring the perpetrators as untraced on 16 June 1996.

The SHRC took suo moto cognizance of this case on 5 February 2007. A report was called for from the police,

⁴⁸ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. Further information sought through RTI on 15 October 2013. By communication dated 28 March 2014 from the Jammu and Kashmir Police a copy of the FIR and final report was provided. Further information sought through RTI dated 14 November 2014.

and it was submitted by the IGP, Jammu [who forwarded a report of SSP, Bhaderwah], dated 24 February 2007. This report stated that the disappearance did indeed take place but that the case was closed by declaring the perpetrators as untraced. The SHRC recommended, on 4 June 2008, that Rs.1,00,000 ex-gratia government relief be provided.

The family of Mohammad Saleem Zargar filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 654/2010] seeking compassionate employment under SRO-43 [Statutory Rules and Orders] and that the recommendations of the SHRC be implemented. Further, additional compensation of Rs.20,00,000 was sought.

Finally, that the FIR be re-investigated, as it had been closed by declaring the perpetrators as untraced. Civil Miscellaneous Petition [CMP] no.1070/2010 was disposed on 27 December 2010 with a direction that the respondents may consider the case of the petitioner for release of amount in question as required by the SHRC. The petition appears to remain pending.

Despite the passage of 17 years and the confirmation of the disappearance of the victim, the Jammu and Kashmir Police chose to close the case by declaring the perpetrators as untraced. No explanations are on record on why the names of the alleged perpetrators provided by the family of the victim were not considered or investigated. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 35

Victim Details

Bashir Ahmad Bhat [Torture and Enforced Disappearance]

Age: 25

Occupation: Working at paddy grinding mill

Son of: Ghulam Nabi Bhat

Resident of: Manzpora, Kuligam, Lolab, Kupwara District

Alleged Perpetrators

1. Major S. A. Bakali [reportedly dead], 12 Maratha Light Infantry [MLI], Army, Camp Mirgund, Kuligam, Lolab, Kupwara District
2. Colonel P. K. Saniyal, [Commanding Officer], 12 Maratha Light Infantry [MLI], Army, Camp Mirgund, Kuligam, Lolab, Kupwara District

Case Information

The victim was a part of the militant group Al-Barq in 1994, and after one year he surrendered before the 4 Grenadiers in the beginning of 1995. He then began work at his paddy grinding mill.

On 25 November 1995, at about 2:00 p.m., Bashir Ahmad Bhat was picked up from his residence by personnel of the 12 MLI Army stationed at Kuligam, Lolab. The personnel told the victim that Major Bakali was calling him to the camp, which was located between the two hills at Kuligam. Even on the previous evening, 24 November, at about 6:00 p.m., the victim had been called by Major Bakali. The victim was released from the camp at about 8:30 p.m. the family of the victim does not know what transpired at the camp on the previous evening. On 25 November 1995 when the victim was taken to the camp, some people accompanied him. But, they were not allowed to enter into the camp. The persons who accompanied the victim upto the camp entrance were: Ghulam Mohi-ud-din Bhat [eledest brother of the victim], Sonallah Mir, son of Khaliq Mir, Ghulam Ahmad Mir, son of Mohammad Mir, Abdul Jabar Khan [Chowkidar, Village guard], Ghulam Mohammad Bhat, son of Aziz, Ghulam Nabi Bhat, son of Munawar, Khazir Mohammad Bhat [Numberdar, de facto revenue authority in the village], Habibullah Rather, son of Rehman Rather [Numberdar, de facto revenue authority in the village] and Yousuf Naikoo, son of Sikandar Naikoo. The family of the victim also states that Major Bakali was well known as he was a muslim and used to pray at the village mosque occasionally. The persons who accompanied the victim to the camp, waited at the gate for more than three hours but the victim was not released. They were chased away from the gate by army personnel with sticks.

The next day, the people mentioned above once again went to the camp to ask after the victim. Major Bakali informed them that he had sent the victim for some work and on his return he would be released. The family of the victim maintains to date that following his surrender, the victim was never working for any agency. The family and other persons continued to visit the camp for a week following the conversation with Major Bakali. The family states that Major Bakali constantly used delaying tactics. Then the family approached the police post Kuligam and filed a complaint. The police intervened but not specific information was provided by the army. Then the family approached Superintendent of Police [SP], Kupwara who contacted Major Bakali on phone. Major Bakali repeated his earlier position that when the victim returns from the assigned work, Major Bakali would inform the family.

In March 1996, SP Kupwara directed the Lalpora Police Station to file a First Information Report [FIR]. It was due to the lack of any progress in the investigations that the family of the victim filed a petition before the High Court in 1997. The family states that Habibullah Rather, Mohammad Yousuf Naikoo, Jabar Khan, Ghulam Ahmad Mir, Ghulam Mohi-ud-din Bhat and the father of the victim Ghulam Nabi Bhat testified before the court ordered enquiry [the enquiry itself does not list either Ghulam Mohi-ud-din or Ghulam Nabi Bhat. Habibullah Rather is

perhaps listed as “Abdullah Rather”].

The family of the victim did not receive any relief/compensation. The family heard that Major Bakali was killed in an encounter in 1997 at Khumriyal, Lolab.

The family of the victim was also harassed subsequent to the abduction and disappearance of the victim. In 1997, the victims brother – Ghulam Mohi-ud-din Bhat, and the victims wife – Saja, were travelling to the High Court, Srinagar, from Kupwara. The bus they were travelling in was stopped by the army personnel. Ghulam Mohi-ud-din was asked to show his identity card. They were then taken to the Cherkote army camp. At the camp, a Sikh Major asked Ghulam Mohi-ud-din about his brother Bashir and where the ammunition was. Ghulam Mohi-ud-din responded by stating that the army had his brother and where could he get ammunition from. Meanwhile, Saja returned to the village and informed people about what was happening. The villagers held a sit in at Cherkote and demanded Ghulam Mohi-ud-din's release. Then, a Brigadier from the Cherkote army camp intervened. He once again asked Ghulam Mohi-ud-din whether he had any ammunition of his brother. Ghulam Mohi-ud-din stated that when his brother surrendered he handed over everything to Major Bakali. The Brigadier then called Major Bakali, who was then at Panzgam where the headquarters of 12 MLI was. After a conversation on the phone, Ghulam Mohi-ud-din was released. He had been detained for the whole day and only released at 5:00 p.m. Ghulam Mohi-ud-din states that on that day he was the only one to be arrested from the bus as he was pursuing the case of his brother. Ghulam Mohi-ud-din believes that there was a more sinister intention than just to harm him. He believes that because of the sit in and because of the intervention of the Brigadier, the Sikh Major had to make up a story of ammunition which was subsequently clarified. Three to four months later, Major Bakali was transferred out of Kuligam camp.

The family of the victim gave a statement to the IPTK on 13 November 2013.

FIR no.38/1996 u/s 346 [Wrongful confinement in secret] Ranbir Penal Code, 1989 [RPC] was filed at the Lalpora Police Station on 12 March 1996. Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 15 October 2013. By communication dated 25 April 2014 from the Jammu and Kashmir Police a copy of the FIR and police correspondence was provided. Further information sought through RTI dated 14 November 2014. By communication dated 10 December 2014 the police stated that investigations have not led anywhere and the case was closed on 13 December 1997.

The family of Bashir Ahmad Bhat filed a petition

before the High Court of Jammu and Kashmir [habeas corpus petition, Section 491 Criminal Procedure Code, 1989 (CrPC) 134/1997]⁴⁹. The respondents to the petition, the Government of Jammu and Kashmir, Director General of Police [DGP], Jammu and Kashmir and Station House Officer [SHO], Lalpora Police Station, denied the arrest and custody of Bashir Ahmad Bhat. On 7 December 1999 an enquiry was ordered, and was conducted by the Principal Sessions Judge, Kupwara. The judicial enquiry was concluded on 15 May 2002. On 10 July 2003, the High Court directed the Senior Superintendent of Police [SSP], Kupwara to indicate the progress of investigations. On 28 September 2004, despite the High Court noting that there had been no substantive progress in the investigations, the petition was dismissed with an order that investigations be expedited.

The document on record that may be analysed in the instant case is the enquiry report of the Principal Sessions Judge, Kupwara.

The enquiry report begins by stating that the Public Prosecutor filed objections on behalf of the respondents and the Commanding Officer who headed the 12 MLI Army at the relevant time. It was stated in these objections that Bashir Ahmad Bhat was never apprehended by the State agencies or Commanding Officer, 12 MLI. Bashir Ahmad Bhat was a surrendered militant as per the record maintained by the Company and he had volunteered to work as a source for the army and on his instance one pistol with magazine and six live rounds of cartridge were recovered. The petitioner [father of Bashir Ahmad Bhat] in the case produced four witnesses, in addition to his own testimony. The relevant evidence is summarized as follows:

- Jabar Khan, Chowkidar of the concerned area, stated that he saw the armed forces of 12 MLI stationed at Mirgund, Kuligam, Lolab, while they were taking away Bashir Ahmad Bhat to the concerned camp. Major S. A. Bakali was in charge of the camp and his office was functioning in a private house belonging to one Mir Abdullah. On the following day, the witness accompanied the petitioner and others to the camp and requested to see Bashir Ahmad Bhat. They were “rebuffed” and sent back. Bashir Ahmad Bhat has not been since then.
- Abdullah Rather, the headman of the village, stated that he had spotted the armed forces of 12 MLI cordoning the house of the petitioner and then apprehending Bashir Ahmad Bhat. Bashir Ahmad Bhat was taken to the “camp located at Kuligam”. The witness accompanied others to the camp and asked for reasons of the arrest. They were directed to visit the camp on the next day. On the following day, on visiting the camp, they were not allowed to see Bashir Ahmad Bhat. But, they were

⁴⁹ Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. Information was provided.

promised that he would be set free. Bashir Ahmad Bhat has not been since then.

- Ahmad Mir and Mohammad Yousuf, neighbours of the petitioner, stated that Bashir Ahmad Bhat was arrested from his house by security forces belonging to the 12 MLI headed by Major S. A. Bakali and was lodged “in army camp at Kuligam”. Despite several requests by the village community the security forces refused to set him free. Bashir Ahmad Bhat has not been since then.

In rebuttal, Colonel P. K. Saniyal appeared in court and produced the surrender certificate of Bashir Ahmad Bhat. The witness stated that on 25 November 1995 he was posted as Commanding officer of 12 MLI headquartered at Panzgam, Kuligam. Bashir Ahmad Bhat was never arrested. The surrender certificate was issued by Major S. A. Bakali [now deceased] under his directions. The certificate stating that Bashir Ahmad Bhat “led to recovery of pistol by C-Company 12 Maratha” was also confirmed to be correct. Bashir Ahmad Bhat had surrendered before the 4th Grenadiers in September/October 1995 and had agreed to work as a source with that unit initially and then 12 MLI. It was under the command and supervision of 12 MLI that Bashir Ahmad Bhat led the personnel to the recovery of a pistol with magazine and six live rounds. But, the victim was not under the custody of the Company headed by the witness and was allowed to move freely. Information was maintained on all surrendered and active militants and Bashir Ahmad Bhat details may also be in these records. But, since the witness had shifted from the relevant place in August 1999 the record was not “in his reach”.

The enquiry report noted that “despite availing several opportunities” the Public Prosecutor had failed to persuade the armed forces stationed at Kuligam to provide the record referred to by alleged perpetrator Colonel P. K. Saniyal in court. The enquiry report then stated that it is established beyond doubt that the victim enjoyed a “fiduciary relationship” with the army personnel of 12 MLI. This relationship was considered to be of an “un-ending nature and persons situated in these circumstances cannot avoid to be at beck and call of the security forces as, when and wherever so required and denial thereof could prove disastrous for them”. The enquiry report further stated that “this is yet another case which speaks volumes about apathy of the state functionaries as concerned authorities have not ventured to locate the arrested person as under law and directions of the Apex court”. The enquiry report also gave consideration to the fact that the record referred to by Colonel P. K. Saniyal was not produced in court. The enquiry report therefore found that the case of the petitioner was made out.

The enquiry report, while stating that the petitioner testified, does not produce the summary of the testimony. The enquiry report is a strong indictment of both alleged perpetrators. While admittedly it is

unclear, based on only the enquiry report, if either of the two alleged perpetrators had actual knowledge of the abduction of Bashir Ahmad Bhat. But, as persons directly in command of the 12 MLI army, and seemingly in control of Bashir Ahmad Bhat, the alleged perpetrators appear culpable in the disappearance of Bashir Ahmad Bhat. Further, the family's version of events, clearly indicts Major Bakali. But, despite the passage of 17 years there appears to have been no progress on investigations or prosecutions. The High Court is also answerable for this delay especially considering that it limited to merely noting that investigations were not progressing when it chose to dismiss the petition. Finally the police closed the investigations. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 36

Victim Details

Abdul Hamid Dar [Torture and Enforced Disappearance]

Age: 30

Occupation: Tailor

Son of: Ghulam Mohammad Dar

Resident of: Pehliharan, Gulistan, Sheeri, Baramulla District

Alleged Perpetrators

1. Captain Satish S. Kakray, 28 Rashtriya Rifles [RR], Army, Camp Sheeri
2. Lance Naik [Lance Corporal] Danpath Singh, 28 Rashtriya Rifles [RR], Army, Camp Sheeri

Case Information

On 29 December 1995, Abdul Hamid Dar was picked up at about 7:30 pm by army personnel of the 28 RR led by Captain Kakray from his residence. On the following day, the family of Abdul Hamid Dar went to the Sheeri Camp where the army personnel denied his custody.

Subsequently, on visiting the Boniyar Camp, the army personnel admitted that the victim had been arrested and allowed the family of the victim to meet with him. On 8 January 1996, the family of the victim met with him. Subsequently, after one week, the family states that Abdul Hamid Dar was brought to the Sheeri Police Station and the Station House Officer [SHO] was told to take the victim. Seeing the critical state of Abdul Hamid Dar, the SHO refused. Abdul Hamid Dar has disappeared since.

The family of Abdul Hamid Dar gave a statement to the IPTK on 20 February 2012.

First Information Report [FIR] no.36/1996 u/s 346 [Wrongful confinement in secret] Ranbir Penal Code, 1989 [RPC] was filed at the Sheeri Police

Station on 10 May 1996⁵⁰. The communication dated 22 May 2012 also stated that the case had been closed as chargesheeted. By communication dated 22 April 2014 from the Jammu and Kashmir Police information was provided that the case was closed as not admitted. By communication dated 6 January 2015 information was provided that the case was closed as not admitted on 25 April 2010. Further, an unclear copy of final report/case diary was provided.

A petition was filed in the High Court of Jammu and Kashmir [habeas corpus petition, Section 491 Criminal Procedure Code, 1989 (CrPC) no.107/1996]⁵¹.

The Government of Jammu and Kashmir sought dismissal of the petition based on a report dated 6 June 1997 from the Criminal Investigations Department [CID] that stated that the victim was untraced from the Joint Interrogation Centres [JIC] manned by the CID in Srinagar and Jammu.

On 22 July 1997 an enquiry was directed to be conducted by the District and Sessions Judge, Baramulla. Enquiries at the Baramulla court reveal that the enquiry was never held.

The family of the victim has received no relief/compensation.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was received in September 2006 and was under consideration.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under AFSPA, stated on 6 September 2011 in relation to this case that sanction was declined.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 incorrectly refers to the victim as Abdul Majid Agoo and places his disappearance on 11 June 1990.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir 10 years to investigate and process the case for acquiring sanction for prosecution under AFSPA, which apparently helped the perpetrators in evading justice. Further, it appears that the police changed their position on the case from stating it was challaned in 2012 to close as not admitted in 2014. Presumably,

this change took place following them receiving the denial of sanction. This action of the police is condemnable as the denial of sanction should not change their own considered position following investigations.

Finally, the conduct of the then SHO of the Sheeri Police Station is highly irresponsible as he should have taken custody of the victim in whatever state he was in and should have initiated immediate action against the culpable army personnel.

Case No. 37

Victim Details

1. Ali Mohammad Dar [Enforced Disappearance]
Age: 25
Occupation: Farmer
Son of: Abdul Ahad Dar
Resident of: Batpora, Magam, Handwara, Kupwara District
2. Ghulam Mohiuddin Dar [Abduction, Wrongful Confinement and Torture]
Son of: Aziz Dar
Resident of: Batpora, Magam, Handwara, Kupwara District

Alleged Perpetrators

1. Major Shetty⁵², 24 Rashtriya Rifles [RR], Army, Camped at ITI Handwara

Case Information

At about 8:00 pm on 3 March 1996, Ali Mohammad Dar and his brother, Mohammad Sultan Dar, were outside their house when army personnel, including Major Shetty came and demanded that Ali Mohammad Dar accompany them.

On the same evening, Ghulam Mohiuddin Dar was also picked up by the same army personnel.

On the following day the family of Ali Mohammad Dar enquired at the Waripora army post who denied that any arrest had taken place.

The family enquired at the 24 RR Camp, ITI Handwara. The Commanding Officer of the Camp informed them that the two victims were lodged in the camp and had been taken to the forest for an operation and would be released after the operation.

There was no news of the two victims for a week after

50 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 22 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

51 Information on the petition number was sought through RTI on 2 July 2012. No information was provided. Information on this petition was sought again on 4 April 2014.

52 The family of Ali Mohammad Dar gave a statement to the IPTK on 15 February 2012 where the alleged perpetrator is referred to as "Major Chetty".

which information was received that Ghulam Mohi ud din Dar was at a hospital in Handwara. Ghulam Mohi ud din Dar informed the family of Ali Mohammad Dar that for the first night they were severely tortured on an allegation of having links with militants which the victims denied.

On 4 March 1996 they were taken to the Batpora jungle. In the jungle there was firing and Ghulam Mohiuddin was able to escape. He had no further information on Ali Mohammad Dar who has disappeared since.

Based on available information a FIR was filed and a petition was filed before the High Court.

The family of Ali Mohammad Dar received Rs.1,00,000 ex-gratia government relief but no compassionate employment under SRO-43 [Statutory Rules and Orders].

The State Human Rights Commission [SHRC] was approached and issued its final decision on 9 September 2009.

The family of Ali Mohammad Dar before the SHRC stated that they had no information on the identity of the armed men who took the victim but stated that they were from the Magam army camp. Ghulam Mohiuddin Dar referred to the 24 RR from Batapora Camp and his story matched the allegations of the family of Ali Mohammad Dar. The additional detail that he provided before the SHRC was that during the patrol Ali Mohammad Dar was made to walk in front of the patrol party.

The Director General of Police [DGP], Jammu and Kashmir, endorsed a report of the Inspector General of Police [IGP], Kashmir which stated that the two victims were taken by the army during a crackdown on 3 March 1996. They were taken to a nearby forest where there was cross firing with militants. Ghulam Mohiuddin Dar managed to escape but there is no information on what happened to Ali Mohammad Dar. The police stated that they had received information that Ali Mohammad Dar was not involved in any subversive activities.

The SHRC in its final decision accepted that Ali Mohammad Dar was innocent with no links to militant activities, and presumed that he died in the forest during the patrol. The SHRC recommended that relief/compensation be provided to the family of Ali Mohammad Dar.

It is unfortunate that the SHRC did not condemn the actions of the army who appear to have used innocent civilians as human shields during an operation. Further, no inquiry appears to have been made on any

torture during the incident.

There also exists no information on record on whether any investigations or prosecutions were conducted by the Jammu and Kashmir Police despite a clear indictment from the SHRC and the police accepting that the victim was in the custody of the army. The burden must lie on the army to prove that Ali Mohammad Dar was not killed in their custody.

The Ministry of Defence seems to have cared very little about the SHRC order, the Jammu and Kashmir Police investigations or in instituting a process for delivering justice.

The available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 38

Victim Details

Shabir Hussain Bhat [Enforced Disappearance]
Son of: Ghulam Mohammad Bhat
Resident of: Chattabal Mohalla, Patlipora Payeen, Srinagar

Alleged Perpetrators

1. Commandant [Colonel / Commanding Officer] S. Raman Thakur [also referred to as "Thakar"], 2nd Battalion Garhwal Rifles / 121st Battalion Garhwal Rifles / 121st Battalion Territorial Army [all three units are referred to in the documentation], Army, Camp Sharifabad

Case Information

On 27 April 1996 Shabir Hussain Bhat was picked up by personnel of the 2nd Battalion Garhwal Rifles / 121st Battalion Garhwal Rifles / 121st Battalion Territorial Army [all three units are referred to in the documentation] Sharifabad from his residence during a search operation and he has disappeared since.

The personnel responsible for the abduction were under the command of Commandant S. Raman Thakar.

First Information Report [FIR] no. 255/1996 u/s 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Parimpora Police Station on 26 November 1996⁵³. The 7 August 2012 communication of the Jammu and Kashmir Police states that this case is under investigation. By communication dated 30 November 2013 this position was re-iterated. The FIR refers to the abduction being carried out by the 121st Battalion

⁵³ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. By communication dated 7 August 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

Territorial Army. Further, it is stated that the victim was picked up from the house of one Salaam Gosami at Boat Colony, Bemina, Srinagar. By communication dated 22 April 2014 from the Jammu and Kashmir Police information was provided that investigations were concluded against the accused persons, and the court issued non-bailable warrants and police were deputed for execution of the warrants but the accused were not found at home. Their whereabouts are still unknown.

The family of Shabir Hussain Bhat filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, Section 491-A Criminal Procedure Code, 1989 (CrPC) 152/1996]⁵⁴. An affidavit was filed on behalf of Commandant S. R. Thakar which stated that Commandant S. R. Thakar did not arrest Shabir Hussain Bhat, and neither was he required by the unit at the relevant time. The investigation agency produced the case diaries which reveal that Commandant S. R. Thakar was a Captain at the relevant time and had abducted Shabir Hussain Bhat. The complainant had identified Commandant S. R. Thakar in the FIR, but the investigations were ongoing. On 24 June 1997 the High Court transferred the case file to the Chief Judicial Magistrate [CJM], Srinagar to monitor the investigations. The final order of the CJM, Srinagar was issued on 18 March 2002. Based on this order, the High Court dismissed the petition on 30 April 2002.

The only document available on record for the purpose of analysis is the CJM, Srinagar order of 18 March 2002.

The order begins by noting that a chargesheet had been filed against Commandant S. R. Thakar u/s 364 [Kidnapping/Abducting to murder], 302 [Murder], 201[Causing disappearance of evidence/giving false information] Ranbir Penal Code, 1989 [RPC]. Based on this, the order concluded that there was nothing further to monitor. A few references in the order may be considered:

- The order refers on occasion to the arrest of Shabir Hussain Bhat being on 26 June 1996, while initially noting that the arrest was in fact on 27 April 1996.
- On 14 March 2002 a statement of the Station House Officer [SHO] Parimpora Police Station was recorded. In addition to a chargesheet had been filed, it was stated that the case was required to be forwarded to Senior Superintendent of Police [SSP], Srinagar for obtaining the sanction for prosecution, under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] from the competent authority.
- The statements of witnesses recorded under

Section 161 [Examination of witnesses by police] Criminal Procedure Code, 1989 [CrPC] confirm the abduction of Shabir Hussain Bhat by Commandant S. R. Thakar.

- Commandant S. R. Thakar is "reported to have been cashiered from the army and his arrest at no point of time has been made by the Investigating Agency during the course of investigation."

As the chargesheet filed against Commandant S. R. Thakar is not with the IPTK, the order and the relevant parts referred to above, serve as a useful indicator of the indictment against Commandant S. R. Thakar.

This case serves as another example of the delays in investigation and the ineffectiveness of the CJM, Srinagar in meaningfully monitoring the investigations. Despite the statement of the SHO Parimpora Police Station of 14 March 2002 that the case was forwarded to the SSP, Srinagar office for obtaining sanction, it requires to be investigated on whose direction for more than ten years the Jammu and Kashmir Government has not sent this case for obtaining sanction for prosecution under AFSPA as evidenced by the official documents available. Further, the Jammu and Kashmir Police, until April 2014, contradictorily suggests that the case continues to be under investigation. As per the most recent update, it appears that the accused are absconding despite non-bailable warrants being issued. Further, it needs to be ascertained why the FIR in the case was filed seven months after the incident. Finally, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 39

Victim Details

Imtiyaz Ahmed Wani [Enforced Disappearance]

Age: 22

Occupation: Gardener, Forest Department

Son of: Gulla Wani

Resident of: Ikhrajpora, Rajbagh, Srinagar

Alleged Perpetrators

1. Major Avtar Singh, 103rd Battalion Territorial Army, deployed at Rawalpura, Srinagar
2. Mohammad Ashraf Khan [Operational names Umar / Bhai Jan], son of Habibullah Khan, Government Gunman [Ikhwan]

Case Information

On the intervening night of 15 and 16 May 1996 at about 9:45 pm security personnel and Ikhwan raided the house and picked up Imtiyaz Ahmed Wani. The

⁵⁴ Information on the petition number was sought through RTI on 2 July 2012. Information was provided.

army had cordoned off the house as well. The abductors were camped at a house of one Doctor Dudha.

The father of Imtiyaz Ahmed Wani gave Rs. 40,000 to one Muma Bhat of Shadipora for his son's release but never received any help from him [though an unsigned, unaddressed letter on record suggests that the sum of money given may have been Rs. 25,000]. Imtiyaz Ahmed Wani has disappeared since.

The family of Imtiyaz Ahmed Wani is not willing to accept compensation or relief and demand that their son be returned to them.

The family of Imtiyaz Ahmed Wani gave a statement to the IPTK on 2 March 2012.

First Information Report [FIR] no.4/1997 u/s 302 [Murder], 364 [Kidnapping/Abducting to murder], 201 [Causing disappearance of evidence/giving false information] Ranbir Penal Code, 1989 [RPC] was filed at the Rajbagh Police Station⁵⁵. By communication dated 30 November 2013 from the Jammu and Kashmir Police it was stated that sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] was awaited in the case. By communication dated 22 April 2014 from the Jammu and Kashmir Police information was provided that the chargesheet in the case had yet to be submitted as the sanction required was still awaited. A copy of the FIR was provided. By communication dated 22 April 2014 from the Jammu and Kashmir Police, information was provided as before. The FIR, filed on 23 January 1997, states that the Special Investigation Team apprehended alleged perpetrator no.2 who implicated alleged perpetrator no.1 in the crime. Subsequently, Major Avtar Singh and his other associates killed and disposed off the body.

The Case Diary states that during investigations Mohammad Ashraf Khan implicated Major Avtar Singh in the commission of the crime.

As per a letter dated 23 October 2000 from the Senior Superintendent of Police [SSP], Srinagar to the Deputy Superintendent of Police [DSP], and a member of the Special Investigating Team, the case was concluded as chargesheeted against the alleged perpetrators. Sanction for prosecution under AFSPA was sought on 17 September 1998 and was awaited.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to the custodial death of Imtiyaz Ahmed Wani in May 1996 that the case is under consideration. But, here the FIR number is listed as "139/96 Baramulla". In relation to

"4/97 P/S Srinagar" it is stated that the case was not received.

Various attempts were made to extradite Major Avtar Singh from Canada, and then the United States, where he had fled after being allowed to acquire a passport.

On 9 June 2012, at around 6:30 am California time, Major Avtar Singh called police authorities in the city in which he was residing and informed them that he had killed members of his family and was going to kill himself.

Subsequently, the dead bodies of Major Avtar Singh and his family were found by the police authorities at Major Avtar Singh's residence.

In addition to the discrepancies in the 2009 affidavit of the Ministry of Defence, it is noteworthy that it has taken the Ministry of Defence at least 11 years [from the time sanction was sought on 17 September 1998 to the 2009 affidavit] to take a decision on whether to grant sanction for prosecution. This has allowed the alleged perpetrators to evade justice.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

With the recent death of Major Avtar Singh, it has been ensured that no justice, by the rule of law, will ever be meted out to him. The processes of justice have therefore ensured impunity. Yet, prosecution can still proceed against alleged perpetrator no.2, after ascertaining his role in the crime.

Case No. 40

Victim Details

Mohammad Akbar Rather [Enforced Disappearance]
Age: 28
Occupation: College student
Son of: Mohammad Subhan Rather
Spouse: Muneera
Resident of: Palhalan, Pattan, Baramulla District.

Alleged Perpetrators

1. Major S. S. Sinha [Operational name: Liyakat Ali Khan], 8 Rajputana Rifles, Army, Camp Palhalan
2. Aziz Rather, Government Gunman

Case Information

⁵⁵ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 9 July 2012 from the Jammu and Kashmir Police, a copy of the Case Diary was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

The family of Mohammad Akbar Rathar states that on 28 November 1996, around 7:30 pm, Mohammad Akbar Rather was picked up by the 8 Raj Rifles and specifically Major S.S.Sinah during search operations at his residence. Mohammad Akbar Rather's family stated that following his abduction and detention he was not given medical care despite suffering from various ailments, including a urinary tract infection. The family also claimed that the victim was not a member of any banned organization, nor had helped any militant group in the commission of an offence. The family of the victim visited the Palhalan Camp, and met with Major S.S.Sinah on numerous occasions. The first occasion was at 10:00 pm on the evening of the arrest. They were informed that the victim would be released, but he was not released. The father of the victim also states that after about twenty days of Mohammad Akbar Rather's disappearance, a local Ikhwan named Aziz Rathar promised to assist in getting the victim released. But, he said that the father would need to prepare a feast for Major S.S.Sinah for the release of his son. The father of the victim states that he prepared a feast, a party was held at the house of Aziz Rathar, and Major S.S.Sinah was present at this party, but the victim was never released.

A First Information Report [FIR] no. 277/2000 was filed u/s 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] at the Pattan Police Station. Earlier, a Daily Diary report at the Pattan Police Station, entered on 14 December 1996, records that Mohammad Subhan Rather [father of the victim] informed them that his son had been arrested on 28 November 1996 at 7:30 pm. The entry also states that a "Major of Indian Army had stated to the plaintiff that his son has managed to escape during the night period of 30 Nov". The FIR was registered on 4 December 2000 following the order of the High Court⁵⁶. By communication dated 22 April 2014 from the Jammu and Kashmir Police a copy of the FIR and closure report of 2005 were provided. But, it was also stated that the final report was unavailable. This information was repeated in communication dated 6 January 2015.

The family of the victim filed a petition before the High Court of Jammu and Kashmir [Section 491 Criminal Procedure Code, 1989 (CrPC) petition no. 33/1997, a habeas corpus petition]. A final decision was delivered on 31 October 2000 based on an enquiry conducted by the Sessions Judge, Baramulla, implicating the army in the abduction of the victim. The judicial enquiry also named Major Sinah. The High Court ordered that a case be registered and the truth be ascertained within six months.

On 6 June 2000 the State Human Rights Commission [SHRC], which was approached by the family of the victim, found the involvement of the army in the

custodial disappearance of Mohammad Akbar Rather and recommended ex-gratia government relief of Rs. 2,00,000.

The wife of the Mohammad Akbar Rather filed another petition before the High Court [Original Writ Petition (OWP) 312/2009] for implementation of the SHRC recommendations on ex-gratia government relief. But so far this relief has not been given to the family of the victim.

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided. Information on the petition numbers was sought again on 4 April 2014.

Further, an enquiry was also conducted under the chairmanship of the Additional District Magistrate, Baramulla.

The family of the victim also gave a statement to the IPTK on 24 December 2011.

As a preliminary point, the unit of the army implicated by the family needs to be considered. The father of the victim in the statement to the IPTK, maintains that the unit was the 8th Battalion Raj Rifles. But, in the petitions filed before the High Court and before the SHRC, reference is made to the "8th Field regiment". The father of the victim maintains that this may have been an inadvertent mistake, but that the family of the victim was always certain that it was the 8th Battalion Raj Rifles.

The SHRC, on 6 June 2000, based on a report by the Senior Superintendent of Police [SSP], Baramulla of 9 May 2000, implicated the army in the abduction and disappearance of Mohammad Akbar Rather and stated the following: "...investigation conducted which points towards the Army, 8th Field Regiment, who have not released the son of the Complainant nor given any clue about him, but the fact is established regarding disappearance of the Complainant's Son under the custody of Army who have not accounted for. The Complainant's son is certified not involved in any subversive activity, rather militancy related affair, but has disappeared under their custody".

The inquiry conducted by the Sessions Judge, Baramulla, on the orders of the High Court, was concluded on 4 September 1998. The inquiry begins by noting that the 8th Battalion Raj Rifles, despite being given notice, did not participate in the inquiry. The inquiry then proceeded to record the testimony of five witnesses. The following is the relevant evidence brought on record:

- Witness Kamal ud-Din, Lambardar

⁵⁶ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. By communication dated 30 November 2013 from Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI dated 14 November 2014.

[Numberdar, de facto revenue authority in the village], stated that following the Akbar's arrest in November 1996, he saw the victim at the Raj Rifles army camp at Palhallan, Pattan. The witness testified that Major Sinah told him that the victim would be released provided he handed over a pistol. The witness then spoke to the victim and asked him to hand over the pistol. The victim denied having any pistol with him. The witness then stated that the army spread a rumour in the camp that the victim had escaped on 28 November 1996.

- Witness Abdul Gaffar Kochey [his relation to the victim or his position in general is not mentioned] stated that Akbar was not involved in any militancy activities. He testified that the victim was arrested on 28 November 1996 by the Raj Rifles at Palhallan, Pattan. The witness stated that Major Sinah permitted them to meet the victim in the camp in the evening of 28 November 1996. Major Sinah said that had Akbar handed over the pistol he would have been released. The victim denied having a pistol. The victim has not been seen thereafter.
- Witness Ghulam Mohi-ud-Din stated that in the evening of 28 November 1996 he was in the house of the victim. The army surrounded the house and Major Sinah was the officer who then took away Akbar.
- Witness Mohammad Subhan Rather, father of Akbar, testified that on 28 November 1996, Major Sinah took away my son and since then he has not been seen.

Before considering the conclusions of the Sessions Judge, a few comments may be made on the above testimony:

- Witness Kamal-ud-Din's testimony confirmed the arrest of Mohammad Akbar by the 8th Battalion Raj Rifles and Major Sinah. The witness is unclear on the specific date of the arrest ["November 1996"] and this might explain his placing the alleged escape of the victim on the 28 November 1996. The family of the victim places it on 30 November 1996, based on rumours they claimed were spread by the army.
- Witness Abdul Gaffar Kochey's testimony strongly corroborates the above testimony. Further, his testimony also corroborates the family account of Mohammad Akbar that they met with the victim on the evening of his arrest.
- Witness Ghulam Mohi-ud-Din's testimony is crucial as it corroborates Akbar's family version of events at their house on 28 November 1996, and implicates the Major Sinah in the arrest of the victim.

No evidence was brought in rebuttal by the respondents before the inquiry. The Sessions Judge, based on the above testimony confirmed the role of Major Sinah in the arrest of the victim and stated that "it is therefore established that 8th Battalion of Raj Rifles which was camped at Palhallan Pattan in November 1996 has arrested the said Mohammad Akbar Rather and it is the 8th Battalion Raj Rifles which has to account for his disappearance."

Therefore, in the instant case, the role of the army is clear. The specific officer involved is also clearly indicted by the inquiry.

What is unfortunate therefore is that thirteen years following this inquiry, it appears no legal action has been taken against Major Sinah despite the High Court order that the investigations were to be completed in six months.

The available documents do not suggest that even a Court-Martial was conducted in this case by the army. A barely legible letter dated 22 June 2009 from the Station House Officer [SHO], Pattan Police Station, to the Sub-Divisional Police Officer, Pattan, is also available. This letter appears to state that investigations confirmed the arrest of the victim by the army, camped at Palhallan, on 28 November 1996.

Further, there appears to be a reference to Major Sinah as being the in-charge of the camp, but the copy of the letter available, being illegible, makes it difficult to be definite. The letter then goes on to state that the army was not cooperating with the investigation, which was therefore closed by declaring the perpetrators as untraced in 2005 but then reopened once again and is ongoing.

Case No. 41

Victim Details

Muzamil Ahmad Chasoo [Enforced Disappearance]
 Age: 16
 Occupation: Working in a pharmaceutical agency and a 9th Standard student
 Son of: Mohammad Shafi Chasoo, Afroza
 Resident of: Dabtal Syed, Hamidpora, Nawa Bazar, Srinagar

Alleged Perpetrators

1. Commandant, 9th Battalion Border Security Force [BSF], Camped at Mamta Hotel [as of February 1997]

Case Information

Muzamil Ahmad Chasoo was picked up by the Commandant of the 9th Battalion BSF a year prior to the incident but was then released as there was no allegation against him.

Three days before the incident there was a raid and the BSF personnel asked for Muzamil Ahmad Chasoo. On 26 February 1997, Muzamil Ahmad Chasoo was outside with a domestic help when he was picked up and has disappeared since. A few days after his disappearance, the BSF personnel raided his house and asked for him. The family of Muzamil Ahmad Chasoo believes this was only done to mask their involvement in his abduction.

The family of Muzamil Ahmad Chasoo gave a statement to the IPTK on 9 March 2012.

A First Information Report [FIR] was filed on 2 March 1997.

The family of Muzamil Ahmad Chasoo filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, Section 491 Criminal Procedure Code, 1989 (CrPC) no.6/2001]. The Union of India, BSF and the Commandant, 9th Battalion BSF denied the arrest of the victim. On 16 April 2002 the matter was referred for a judicial enquiry. The judicial enquiry conducted by the Additional Sessions Judge, Srinagar, was concluded on 28 November 2002. Based on the testimony adduced by the respondents and the disparity on dates between the petitioners witness Reyaz Ahmed and the petitioners version of events, the enquiry could not conclude that the 9th Battalion BSF had abducted Muzamil Ahmad Chasoo, but confirmed that Muzamil Ahmad Chasoo had disappeared. Based on the enquiry report, the High Court disposed off the petition on 27 January 2004 with the observation that “petitioner is free to take recourse to appropriate legal remedies, if in possession of better particulars and legally sustainable information/facts touching the disappearance of” Muzamil Ahmad Chasoo.

A complaint was filed by the father of Muzamil Ahmad Chasoo on 25 May 1998 to the National Human Rights Commission [NHRC] and notice was issued to the Ministry of Home Affairs. There are two documents on record: one dated 16 August 2000 which closes the case based on a response from the Ministry of Home Affairs. The second dated 18 August 2000, stamped as 21 August 2000, forwards the status of the case to the Muzamil Ahmad Chasoo's family. The 16 August 2000 order closed the case based on the response from the Ministry of Home Affairs that they were not responsible for the abduction of “Jehangir”, the nickname of Muzamil Ahmad Chasoo.

After confirming the disappearance of Muzamil Ahmad Chasoo, the High Court should have continued to monitor the investigations on the FIR. But, instead the High Court chose to shift the burden of seeking justice back on the victim's family. Similarly, the NHRC, based it would seem entirely on the representations of the Ministry of Home Affairs, dismissed the case. The approach of both the High Court and the NHRC clearly resulted in a denial of justice as it appears no investigations or prosecutions have taken place.

The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir. No information was provided.

The IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

Case No. 42

Victim Details

Mohammad Shafi Shah [Enforced Disappearance]
Occupation: 2nd year Bachelor of Sciences [BSC] student
Son of: Ali Mohammad Shah
Resident of: Mirnag, Hyhama, Kupwara District

Alleged Perpetrators

1. Deputy Superintendent of Police [DSP] Ghansham, Special Operations Group [SOG], Jammu and Kashmir Police

Case Information

On 4 April 1997, Mohammad Shafi Shah was picked up by SOG personnel, led by DSP Ghansham, from Karan Nagar, Srinagar. Mohammad Shafi Shah has disappeared since.

The brother of Mohammad Shafi Shah, filed a complaint before the State Human Rights Commission [SHRC] on 6 March 2007. The final decision was given by the SHRC on 15 July 2009.

The SHRC sought a report from the Director General of Police [DGP], Jammu and Kashmir, which stated that some “unidentified gunmen” had kidnapped Mohammad Shafi Shah from his rented accommodation. Further, that nothing adverse had been found against him. Two witnesses were produced before the SHRC: Peerzada Mohammed Jaffar and Ali Mohammad Shah, the father of the victim.

Peerzada Mohammed Jaffar stated that “the Task Force party from Karan Nagar Police Station” abducted Mohammad Shafi Shah along with eight others. Further, he also stated that “the locals” of the area were saying that the party was headed by one “Dy.SP Ghansham”. The father of the victim stated that he heard about the abduction of his son by the “Task Force”. Further, that he heard that Mohammad Shafi Shah had been taken to the SOG Camp, Cargo, for questioning. Further, that “thereafter he visited Cargo office where he was allowed to meet his son”.

The SHRC stated that the factum of disappearance of Mohammad Shafi Shah was confirmed in the police report along with the fact that Mohammad Shafi Shah was not involved in any militancy related activities.

The SHRC recommended Rs.1,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders].

Despite the passage of 15 years, and the SHRC decision confirming the disappearance based on a police report, no information exists on whether any investigations or prosecutions were conducted by the Jammu and Kashmir Police in this case. It needs to be ascertained whether even a FIR was filed.

Case No. 43

Victim Details

1. Mushtaq Ahmad Dar [Enforced Disappearance]
Age: 25
Occupation: Labourer
Son of: Azizi, Ghulam Mohammad Dar [deceased]
Resident of: Tengpora, Bemina, Srinagar
2. Mushtaq Ahmad Khan [Enforced Disappearance]
Age: 25
Occupation: Daily Wager in Forest Department
Son of: Muhammad Sultan Khan [deceased]
Resident of: Tengpora, Bypass, Batamaloo, Srinagar

Alleged Perpetrators

1. Commanding Officer [Colonel] S. K. Malik, 20 Grenadiers, Army, Camp Boat Colony, Bemina, Srinagar
2. Major Vishu Jeet Singh / Major Vishwajeet Singh, 20 Grenadiers, Army, Camp Boat Colony, Bemina, Srinagar
3. Naib Subedar, Nazahar Mohammad, 20 Grenadiers, Army, Camp Boat Colony, Bemina, Srinagar

Case Information

On the intervening night of 13 and 14 April 1997, around midnight, Mushtaq Ahmad Dar was picked up by the personnel of the 20 Grenadiers camped at Boat Colony, Bemina, Srinagar. While the other members of the family were locked in one room, Mushtaq Ahmad Dar was tortured and then taken away. The next morning, Mushtaq Ahmad Dar's mother approached the concerned camp, the personnel of which admitted that they had picked him up and that he would be released shortly. But, subsequently they denied that Mushtaq Ahmad Dar was with them. A person named Nazahar Mohammad, Naib Subedar,

demanding Rs. 20,000 from the Dar's family for his release. He subsequently returned the money to the family. Mushtaq Ahmad Dar consequently disappeared in Army custody.

Another victim namely Mushtaq Ahmad Khan of the same locality was also picked up by the same personnel around the same time. He too was tortured in a separate room in his residence before being taken away. The family of Mushtaq Ahmad Khan met with Nazahar Mohammad, Naib Subedar, and an officer named "Malik" of the 20 Grenadiers, but he was not released. Khan subsequently disappeared in Army custody.

Mushtaq Ahmad Dar's family filed a petition before the High Court of Jammu and Kashmir [HCP 77/1999], a habeas corpus petition] seeking production of the victim, a judicial enquiry, prosecution of the 20 Grenadiers, and compensation of Rs.10,00,000. The respondents, Union of India and the Commandant, 20 Grenadiers denied any operation was conducted on 13 April 1997 and denied the arrest of the victim. On 2 May 2000 the High Court ordered an enquiry into the incident by the Court of Additional Sessions Judge, Srinagar. Further, on 2 April 2009, based on a High Court directive of 28 October 2003, a First Information Report [FIR] no. 66/2009 u/s 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was registered at the Parimpora Police Station. The report by the Court of Additional Sessions Judge, Srinagar, was submitted on 18 July 2002 and indicts the 20 Grenadiers and confirms the abduction but does not specifically name any perpetrators. While the State of Jammu and Kashmir and Director General of Police [DGP], Jammu and Kashmir appeared through counsel on some occasions, the Union of India and the Commandant, 20 Grenadiers made no appearance. On 25 March 2011 the High Court ordered prosecution on the FIR, confirmed that Dar was abducted by the 20 Grenadiers, and ordered compensation of Rs. 10,00,000. On the non-implementation of this decision, the family of the victim filed a contempt petition [no.4/2011]. On 1 May 2012, the 25 March 2011 order was upheld by the High Court subject to any subsequent directions passed on a Letter Patent Appeal [LPA] filed by the respondents against the 25 March 2011 order. In June 2012, the earlier order on compensation was upheld⁵⁸. A last opportunity to the Ministry of Defence to make the payment was made by the Division Bench of the High Court on 24 July 2012⁵⁹. Reportedly, the LPA was dismissed and Rs.10,90,000, including interest, was paid by the Defence Secretary⁶⁰.

58 Greater Kashmir, <http://www.greaterkashmir.com/news/2012/Jun/13/hc-directs-defence-secretary-to-compensate-victim-s-mother-67.asp>, 12 June 2012.

59 Kashmir Reader, <http://kashmirreader.com/07252012-ND-custodial-disappearance-1995.aspx>, 25 July 2012.

60 Kashmir Reader, <http://kashmirreader.com/10122012-ND-finally-defence-ministry-pays-rs-10-9-lakh-to-disappeared-man%E2%80%99s-kin-5535.aspx>, 12 October 2012.

Information on the petition number [HCP 77/1999] was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Information was provided. Information on the contempt petition was sought through RTI on 2 July 2012. Information was provided.

Mushtaq Ahmad Khan's family filed a petition before the High Court [habeas corpus petition, Section 491 Criminal Procedure Code, 1989 (CrPC) petition no.15/1999]. Based on the High Court order of 7 November 2000, FIR no.2/2001 u/s 364 [Kidnapping / Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Batamaloo Police Station. The family of Mushtaq Ahmad Khan also approached the State Human Rights Commission [SHRC] which recommended ex-gratia government relief of Rs. 1,00,000 on 2 June 2000 and the same was received by the family. Information on the petition number was sought through RTI on 2 July 2012. No information was provided. Information was sought again on 4 April 2014.

Information on both the above listed FIR's was sought through RTI on 5 May 2012. By communication dated 2 June 2012 from the Jammu and Kashmir Police, information relating to FIR no. 66/2009 was provided stating that the case was still under investigation. A copy of FIR no.2/2001 was also provided. Further information sought through RTI on 15 October 2013 on both FIRs. By communication dated 22 April 2014 from the Jammu and Kashmir Police a copy of the FIR [66/2009] was provided along with a communication from the Director General of Police, Jammu and Kashmir, to the Inspector General of Police, Kashmir. The communication from the Director General of Police refers to certain clarifications that were sought. The communication states that responses to four observations raised were satisfactorily answered. But, that the explanations to two points were not answered satisfactorily. The following para's forms the gist of this communication:

"With regard to point no. 02 it is submitted that the complicity of the accused persons on the testimony of a single witness is good and may not require any corroborative evidence from any other witness and as such the non-implication of other persons who can be made accused is unjustified on the sole ground that no corroborative evidence is available against them. Secondly, the I/O was under obligation to comply with the provisions of Sec 164-A Cr. PC and delay in recording statements, though bad in law, do not strike at the root of the proceedings and cannot be disposed with at any cost.

As such, the Investigating Agency may be directed to collect some evidence against the other two officials besides, getting the statements of material witnesses recorded U/S 164-A Cr. PC before the competent court, the file can then be processed for accord of sanction."

Further, in response to a statement by the Government

of Jammu and Kashmir on 5 March 2012 that over the last three years, 444 FIRs had been filed against the armed forces and the police, a RTI was filed seeking information on these cases. On 2 June 2012 information was provided on FIR no.66/2009 that the case was under investigation. By communication dated 30 November 2013 it was stated that FIR 2/2001 was still under investigation. This position was reiterated by communication dated 30 November 2013.

The family of Mushtaq Ahmad Dar also gave a statement to the IPTK on 24 November 2011 and the family of Mushtaq Ahmad Khan also gave an unsigned statement to the IPTK on 27 February 2012.

In addition to the account of the family of Mushtaq Ahmad Dar, the enquiry report of 18 July 2002 of the Court of Additional Sessions Judge, Srinagar is presently the only account that may be considered in a case where an FIR was registered, on the intervention of the court, approximately twelve years following the abduction of the victim, and six years after the court ordered the filing of the FIR. Unfortunately, not much information [besides the account of the family] exists in the case of Mushtaq Ahmad Khan. But, as both cases are closely related, the below analysis would serve as an indictment for the alleged perpetrators in both cases.

The enquiry report found that it was "clearly established" that the victim was "lifted" by the 20 Grenadiers camped at Boatman Colony, Bemina and was in their custody. Further that as of the date of the enquiry report the whereabouts of the victim was unknown. The enquiry report continues to state that "specifically liability could not be fixed because it is not known as to which of the Army personnel had lifted Mushtaq Ahmad Dar, though 20 Grenadiers is responsible for having lifted Mushtaq Ahmad Dar". The enquiry report bases this conclusion on the witness testimony heard, but it is unfortunate that the enquiry report does not confirm certain other details.

Witness Haji Abdul Rashid Dar states that he contacted Commanding Officer S. K. Malik "2-3" days after the incident and was told by the Commanding Officer that he would personally release Mushtaq Ahmad Dar. Thereafter, the witness states that he contacted the officer approximately ten times, but the victim was not released. The witness also speaks of an "army person", Nazahar Mohammad, demanding Rs. 20,000 [which was subsequently returned], and the witness speaks of meeting "Maj. Vishou" [whom the Additional Sessions Judge, while summarizing the evidence, refers to as "Maj. Vishu Jeet Singh"] who "assured him that Mushtaq Ahmad will be released as he [Mushtaq Ahmad] is not a militant". This evidence was not overturned or affected in any way in the cross-examination that followed. In fact, elements of it were corroborated by other witnesses. Witness Abdul Rehman Bhat confirms that Haji Ab. Rashid contacted army people. He also states, presumably after gaining this information from others that "army people admitted that Mushtaq Ahmad Dar is lying with them".

Abdul Rehim Dar states, while presumably referring to Mushtaq Ahmad Dar's mother and himself, "number of times they went to army people for release of Mushtaq Ahmad". Ali Mohammad Dar also states the same. Finally, the victim's mother, Azizi, states that on the day following the incident, "...they went to Boatman Colony where 20 Grenadiers was camped" and that "...officers told her that Mushtaq Ahmad is in their custody". The totality of the evidence, founded on the specific names that witness Haji Abdul Rashid Dar mentioned should have resulted in the Additional Sessions Judge concluding not just on the abduction but also on the names of persons who clearly had knowledge of the incident and could be attributed with some level of responsibility. Also, of interest is the entry in the Daily Diary of the Batamaloo Police Station which might indicate that the victim was at some point brought to the police station. Another document of interest is a letter from the mother of the victim to the Station House Officer [SHO], Batamaloo Police Station which recounts the events and indicts "Major Vishwajeet Singh alias Singh Sahib, Sh. Kuladi, Kalla and Captain Anil Malik". Except for Major Vishwajeet Singh [who would presumably be alleged perpetrator no.2], the other names are unfamiliar on the record and the family of the victim also did not mention these names to the IPTK.

Notwithstanding the incomplete conclusions by the Additional Sessions Judge, it is important to highlight that a case that took twelve years for a FIR to be registered has still not resulted in any prosecutions, despite the findings of the Additional Sessions Judge in 2002. Further, it is also important to note that despite information that suggests that the FIR was filed on 2 April 2009, the enquiry report of the Additional Sessions Judge, Srinagar [which was issued on 18 July 2002] suggests that an FIR had already been filed.

Similarly, in the case of Mushtaq Ahmad Khan, while an FIR was registered, the victim remains disappeared. In this case, on 24 November 2003, the Deputy Commissioner, Srinagar, while sanctioning ex-gratia government relief of Rs. 1,00,000 recommended by the SHRC, referred to certain police correspondence that are pertinent.

First, the letter dated 21 June 2002 from the Senior Superintendent of Police [SSP], Srinagar confirms that the victim was arrested by the 20 Grenadiers on the intervening night of 13 and 14 April 1997 and has disappeared since. Further, that the victim was not involved in any militancy related activities.

Second, the letter dated 15 July 2003 from the SSP, Srinagar noted that a FIR had been filed and investigations were ongoing.

Third, the letter dated 20 September 2003 from the Criminal Investigation Department [CID] confirms the abduction and refers to the "army" as being responsible. Despite these confirmations, the police

investigations have not resulted in specific indictments of the perpetrators of the crime.

Also, of interest, in both the above cases of disappearance, is a submission of November 2010 by the SHO, Parimpora Police Station, before the High Court in HCP no.77/1999. It is stated that a written report was filed in the Batamaloo Police Station on 14 April 1997 regarding the arrest of both victims. Further, SHO, Parimpora Police Station, based on investigations, confirms that a "Sikh Officer" of the 20 Grenadiers, camped at Tengpora, did abduct Mushtaq Ahmad Dar. It was also submitted that Major Rahul Jaswal, the Adjutant of 20 Grenadiers wrote a letter dated 17 November 2009 to the SHO where besides denying the arrest of Mushtaq Ahmad Dar, it was also stated that the case in the High Court had been dismissed on 19 July 2005, which is clearly a misrepresentation.

Despite the passage of 15 years both cases appear to remain under investigation. In the case of FIR no. 66/2009 it appears that other accused persons may be implicated. Reportedly the case file on sanction is pending with the Ministry of Defence. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 44

Victim Details

Mehrajuddin Dar [Enforced Disappearance]

Age: 27

Occupation: Shopkeeper / Released militant

Son of: Abdul Razak Dar

Resident of: Tengpora bypass, Batamaloo, Srinagar

Alleged Perpetrators

1. Commanding Officer [Colonel] S.K.Malik, 20 Grenadiers, Army, Camp Boat Colony, Bemina, Srinagar
2. Major Vishu Jeet Singh / Major Vishwajeet Singh, 20 Grenadiers, Army, Camp Boat Colony, Bemina, Srinagar
3. Naib Subedar Nazahar Mohammad, 20 Grenadiers, Army, Camp Boat Colony, Bemina, Srinagar

Case Information

On the intervening night of 20 and 21 April 1997 the family of Mehrajuddin Dar states that army personnel of the 20 Grenadiers accompanied by Major Vishwajeet Singh and Naib Subedar Nazahar Mohammad raided and ransacked their house. They took Mehrajuddin Dar in another room and started questioning him for about one hour. The family of Mehrajuddin Dar states that he was later taken in an army vehicle. They state that Mehrajuddin Dar was a militant in the early 1990's but after his arrest and detention of about three years he was released and

started to live the life of a common man.

The next day, the family went to the Batamaloo Police Station and lodged a report but for two years the family was not given the copy of the police report. Only after two years were they given a copy after they used some influence. The family states that they also went to the 20 Grenadiers Camp but the army did not allow them inside the camp. The family states that they were beaten by the army since they were making rounds of the camp. The family talked to Commanding Officer S.K.Malik but he denied that the victim had been arrested. The family states that the army took Rs.15,000 and promised that the victim would be released but to no avail. The army initially acknowledged that Mehraj ud din Dar had been picked up by them but later retracted their statement.

The family of Mehrajuddin Dar also states that one Sajad Ahmad, resident of Zainadhar Mohalla, Habbakadal, took about Rs. 6,00,000 from the family on different occasions on the promise of assisting in the release of Mehrajuddin Dar. Further, Sajad Ahmad also falsified documents from jail authorities and army units to convince the family that he knew the whereabouts of the victim.

The family of Mehrajuddin Dar gave a statement to the IPTK on 27 February 2012.

First Information Report [FIR] no. 3/2001 u/s 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Batmaloo Police Station on 5 January 2001⁶¹. By communication dated 30 November 2013 from the Jammu and Kashmir Police it was stated that the case was under investigation.

The family of Mehrajuddin Dar filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, Section 491 Criminal Procedure Code, 1989 (CrPC) no.13/1999⁶²]. On 7 November 2000 the High Court ordered that a FIR be registered and investigations carried out. Based on this, the above referred FIR no.3/2001 was lodged.

The FIR states that the contention of the family of the victim was that Mehrajuddin Dar was picked up on the intervening night of 19 and 20 April 1997. This leads to a slight discrepancy with the recent statement given by the family of Mehrajuddin Dar. As per the FIR, the 20 Grenadiers denied the charges before the High Court and denied that any search operation had even taken place.

The following information, based on a report entitled "In search of vanished blood: the writ of habeas

corpus in Jammu and Kashmir: 1990-2004" may be considered⁶³:

"In their reply to this petition, the 20 Grenadiers denied Mehrajuddin's arrest and, denied that they had carried out any operation in his locality on the date of his alleged arrest. In November 2000 the Court disposed of the petition with a direction to the police to register a case regarding Mehrajuddin's disappearance and, to file a report regarding the progress in the investigation after six months. This order was not complied with".

Further, the report states that Major Vishwajeet Singh was awarded the 'Ati Vishisht Sewa' medal by the Government of India in 1998.

Also of interest is a letter dated 9 February 2007 from the family of Mehrajuddin Dar to the Station House Officer [SHO], Batamaloo Police Station where reference is made to the raiding party and in addition to Major Vishwajeet Singh and Naib Subedar Nazahar Mohammad, reference is made to: "Kuladi, Kalla and Captain Anil Malik". But, in the recent statement given to the IPTK these names are not mentioned.

Of further interest, and indicting the 20 Grenadiers, is a letter dated 20 March 2003 from the Senior Superintendent of Police [SSP], Srinagar to the District Magistrate, Srinagar that states that a report from the SHO, Batamaloo Police Station confirms that the 20 Grenadiers were involved in the arrest of Mehrajuddin Dar. Further, that the 20 Grenadiers were not cooperating with the investigations.

The family of Mehrajuddin Dar also approached the State Human Rights Commission [SHRC].

The family of Mehrajuddin Dar has not received any relief/compensation.

The Jammu and Kashmir Police took four years to file a FIR in this case, and that too only after the intervention of the High Court. Further, no information exists on record on the state of investigations or prosecutions over the last 11 years following the filing of the FIR. The apparent lack of any action may also be a criticism of the High Court that should have remained seized of the matter instead of leaving it to the discretion of the Jammu and Kashmir Police.

Further, the Ministry of Defence seems to have cared very little about the High Court order, the Jammu and Kashmir Police investigations or in instituting a process for delivering justice.

The available documents do not suggest that even a Court-Martial was conducted in this case by the army.

61 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 2 June 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013.

62 Information on the petition number was sought through RTI on 2 July 2012. No information was provided. Information was sought again on 4 April 2014.

63 Ashok Aggarwal, October 2008, pp.87-88.

Case No. 45Victim Details

Abdul Ahad Malik [Enforced Disappearance]
 Age: 50
 Occupation: Employee in Public Health and Engineering Department
 Son of: Asadullah Malik
 Resident of: Doolipur, Kreeri, Pattan, Baramulla District

Alleged Perpetrators

1. Major Samir Singh [Operational name: Major Malik], 8 Rajputana Rifles, Army, Camp Kreeri

Case Information

On 24 May 1997, at about 9.30 pm, the army cordoned off Abdul Ahad Malik's house. But Abdul Ahad Malik was at his aunt's residence in Wagoora.

At Abdul Ahad Malik's actual house at Doolipur, his son, Abdul Hussain Malik, was awakened and the whole family was asked about Abdul Ahad Malik's whereabouts. The family stated that the aunt's residence at Wagoora was also cordoned off. The aunt's family at Wagoora was also interrogated.

The victim's other son, Altaf, and brother, Abdul Rehman, were picked up from their house and taken to Wagoora in search of Abdul Ahad Malik.

Abdul Ahad Malik was picked up from his aunt's residence at Wagoora and taken in an army vehicle. The family states that they never saw Abdul Ahad Malik again. Neither was his dead body handed over to them.

The family of Abdul Ahad Malik states that FIR no. 4/1997 was filed at the Kreeri Police Station on 22 June 1997. They also state that they went to many army camps to ask about Abdul Ahad Malik but they were not given any information.

The family states that they were threatened by the army, and fearing repercussions, they stopped pursuing the case. The family of Abdul Ahad Malik also states that the original FIR filed named Major Samir Singh but this was subsequently changed under pressure.

The family of Abdul Ahad Malik gave a statement to the IPTK on 6 March 2012.

Contradicting the position of the family, a letter dated 28 August 2000 from the Senior Superintendent of Police [SSP], Baramulla, to the Assistant Commissioner, Baramulla, states that information was received by the Kreeri Police Station on 20 June 1997 and an entry was made in the Daily Diary of the

Police Station. Following investigations, FIR no.6/1998 u/s 365 [Kidnapping/Abducting with intent to secretly and wrongfully confine] was filed at the Pattan Police Station. The investigation was closed by declaring the perpetrators as untraced on 8 April 1999. This letter also states that Abdul Ahad Malik was not involved in any subversive activities. To add to the confusion on the issue of the FIR, a letter dated 6 September 2003, from the SSP, Baramulla, to the Deputy Commissioner [DC], Baramulla refers to the filed FIR no. as 6/1997 u/s 365 [Kidnapping/Abducting with intent to secretly and wrongfully confine] at the Pattan Police Station. Finally, by communication dated 22 April 2014 from the Jammu and Kashmir Police, information was provided that the Kreeri Police Station was only established in the year 2000. Further information on both FIRs was sought through RTI dated 14 November 2014. By communication dated 6 January 2015, information was provided that 6/1998 case was closed as untraced on 9 April 1994 but was reopened and is under investigation. On 4/1997 it is stated that the case was not registered there.

Information on the FIR's was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013 on the FIRs. By communication dated 30 November 2013 from Jammu and Kashmir Police a copy of FIR no.6/1998 was provided and this is the correct FIR no. in relation to this incident. A copy of FIR no.6/1997 was also provided which is not relevant to this incident. By communication dated 22 April 2014 from the Jammu and Kashmir Police a copy of the FIR was provided and information that the case was closed by declaring the perpetrators as untraced.

On 22 March 2002 the District Magistrate, Baramulla, on the basis of an enquiry conducted, stated that Abdul Ahad Malik was lifted by the army in May 1997 "and got killed by terrorists". Further, Abdul Ahad Malik was presumed dead. No explanation is provided on how it could be concluded that the victim had been killed by "terrorists". The annexed enquiry report states that the army lifted Abdul Ahad Malik on the intervening night of 24 and 25 May 1997. The enquiry report also refers to a report received from the 29 Grenadiers [the text on this portion is unclear] which confirms that Abdul Ahad Malik was picked up on the intervening night of 24 and 25 May 1997 and since then his whereabouts are unknown. The enquiry, then makes a similar leap and presumes his killing by terrorists.

The family of Abdul Ahad Malik also approached the National Human Rights Commission [NHRC]. The matter was placed before the NHRC on 9 June 2000. On the same date the NHRC closed the case. The NHRC, in its order, states that the family of Abdul Ahad Malik had claimed that he was apprehended by the "8th Gorakha Regiment" and since then was not traceable. A report was sought from the Defence Secretary,

Union of India. This report stated that there was no such unit in the army, and that Abdul Ahad Malik was not apprehended by the army. Further, that there existed no report regarding Abdul Ahad Malik in the police station.

Based on this the NHRC closed the case. Once again, there appears to be a contradiction from the family with regard to the unit of the army involved. But, clearly, the representation of the Defence Secretary, Union of India, that no police record of the incident exists, is also patently false.

The family of Abdul Ahad Malik received Rs. 1,00,000 ex-gratia government relief compassionate employment under SRO-43 [Statutory Rules and Orders].

On record is an affidavit by the wife of Abdul Ahad Malik and his daughter that states that the Abdul Ahad Malik was apprehended from his own residence on the intervening night of 24 and 25 May 1997 by the "9 GR". This information, particularly the unit of the army involved contradicts with the statement given by the family to the IPTK.

No information exists on what basis the Jammu and Kashmir Police closed the investigations in this case declaring the perpetrators as untraced. This closure report would, by law, have to be judicially scrutinized. Whether this was actually done would need to be ascertained, particularly as the more recent communication states that the case is still under investigations.

The impunity for the perpetrators of the crime has been compounded by the manner in which the NHRC closed its enquiry based on patently false representations.

The Ministry of Defence seems to have cared very little about the possible involvement of the army in a crime as the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 46

Victim Details

Ali Muhammad Mir [Enforced Disappearance]
Age: 67 years
Occupation: Government Employee
Son of: Abdul Rehman Mir
Resident of: Dachigam, Bandipora.

Alleged Perpetrators

1. Suman, Major, 14 Rashtriya Rifles [RR], Chiternaar Camp

Case Information

On 19 June 1997, at about 9 pm army personnel of 14 RR from Chiternaar camp, Bandipora came to the

house of Ali Mohammad Mir. They entered the house and told him to accompany them as that they had to ask him some questions. He had no connections to any militant outfit, and was a retired government employee working with the Civil and Public Distribution Department. His family, and neighbourhood witnessed him being picked up by the army personnel. They took him to the army camp, Chiternaar.

Immediately after the incident, his wife Saja Begum went to Police Station, Bandipora and lodged a First Information Report [FIR] against army persons from Chiternaar Camp. The Station House Officer [SHO] confirmed to the family that he had been taken by army persons headed by Major Suman, but assured them that he would be released soon, after conducting their enquiries. Three days passed but the victim was not released. Within the three days the SHO had transferred himself to some place unknown to the family. The SHO did this as he was aware of what actually had happened to the victim, and did not want to answer the family's repeated questions.

After few more days the family of the victim, along with locals protested against the illegal detention of the victim and were assured by the District Administration that they would investigate the matter. A committee was formed and the concerned SHO was ordered to submit his report within 3 days. He did not submit any such report.

The family searched for the victim everywhere but couldn't find him. Finally after about 6 months, district authorities handed over a issuance of death certificate order dated 8 January 1998, signed by District Magistrate Baramulla, Atal Dullo which stated that the victim was kidnapped by some unknown militants on 19 June 1997 and was thereafter killed. It also stated that the dead body had not been recovered. [This document is on file with IPTK]. A death certificate was issued on the basis of this letter.

The son of the victim, Aijaz Ahmad Mir gave the above statement to IPTK on 28 July 2015.

The witness statement is clear, and cogent evidence is presented of the enforced disappearance of the victim. The name of the alleged perpetrator is based purely on what was communicated by the SHO and therefore requires further investigation.

Case No. 47

Victim Details

Abdul Rashid Wani [Enforced Disappearance]
Age: 35
Occupation: Truck driver
Son of: Abdul Samad Wani
Resident of: 87, Madina colony, Bemina, Srinagar

Alleged Perpetrators

1. Captain Yadav, 2/8 Gorkha Rifles, Army

Case Information

On 7 July 1997, Abdul Rashid Wani was abducted and has disappeared since.

The family of the Abdul Rashid Wani filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, HC 139/1997]⁶⁴.

The Government of Jammu and Kashmir and the army unit implicated denied the arrest and detention of Abdul Rashid Wani. Therefore, on 6 April 1999 an enquiry was ordered, which was conducted by the Court of Sessions Judge, Srinagar and concluded on 1 February 2001.

Rs. 1,00,000 ex-gratia government relief and Rs. 4,00,000 in lieu of compassionate employment under SRO-43 [Statutory Rules and Orders] were received by the family of the victim.

The only document on record for the purpose of analysis is the 1 February 2001 enquiry report.

The enquiry report begins by noting that the respondents in the case, Government of Jammu and Kashmir, Director General of Police, [DGP], Jammu and Kashmir, other police authorities and the army unit implicated, appeared during the enquiry and denied the arrest or detention of Abdul Rashid Wani. The petitioner, Bilal Ahmad Mir, produced four witnesses, including himself, during the enquiry. The respondents did not choose to produce any evidence despite time and opportunity.

The relevant evidence as produced by the petitioner and witnesses was as follows:

- Farooq Ahmad Bhat, testified that on 7 July 1997 he was travelling in a Matador bus from Lal Chowk to Rangreth when personnel of the 2/8 Gorkha Rifles stopped the vehicle and brought down the witness. Abdul Rashid Wani, who was travelling on a scooter, was also stopped. Captain Yadav arrested the witness and Abdul Rashid Wani and made them sit in a vehicle and took them to Sharifabad Camp. The witness was released at 5:00 pm but the victim was not. The witness testified that Abdul Rashid Wani was known to him as he too was a driver. The witness informed the family of Abdul Rashid Wani that he had been arrested by Captain Yadav. On cross-examination, the witness stated that he had not seen Abdul Rashid Wani from the day of the arrest.
- Bilal Ahmad Mir testified that "Manzoor

Ahmad Driver" informed him that "2/8 G.R" arrested Abdul Rashid Wani from the Matador bus. The witness went to the army camp but got no information. The witness went to the police station where an FIR was not registered but the police entered a report in the Daily Diary.

- Shabnam, wife of Abdul Rashid Wani, testified that in the evening they received information that Abdul Rashid Wani had been arrested by Captain Yadav while he was travelling in a Matador bus. The witness testified that she met with Captain Yadav who informed her that Abdul Rashid Wani was with him and would be released after two days. Subsequently, she once again went, along with her parents, to meet Captain Yadav who on this occasion denied the arrest of Abdul Rashid Wani. In January 2000, army personnel from the Sharifabad Camp came to their residence and asked them to withdraw the case from the court in exchange for compensation. They also informed the witness that they should not expect the "return of the dead person". The witness further stated that "Army Captain informed her that Abdul Rashid Wani has been buried at Rawalpura". The witness then went to the Rawalpura locality where the local people confirmed that Captain Yadav had killed a person during the night and the people of the locality buried the body in the vicinity. In cross-examination, the witness stated that the police refused to register any case against the army.
- Azizi, mother-in-law of Abdul Rashid Wani, testified on the same lines as witness Shabnam. Additionally, the witness testified that Captain Yadav admitted to the arrest of Abdul Rashid Wani and promised his release "after two days from 7 January 1997". When the witness met Captain Yadav subsequently he denied the arrest of Abdul Rashid Wani.

The respondents did not adduce any evidence, and the enquiry concluded by stating that the Captain Yadav is responsible for the arrest and disappearance of Abdul Rashid Wani. The evidence, and the conclusions of the enquiry report are a strong indictment of Captain Yadav. One area that would require clarification is Bilal Ahmad Mir's evidence where he refers to hearing of the abduction of Abdul Rashid Wani from a "Manzoor Ahmad". Further, the evidence suggests that Abdul Rashid Wani was in the Matador bus [this was also stated by witness Shabnam] and not a scooter as claimed by Farooq Ahmad Bhat. Notwithstanding these necessary clarifications, the enquiry report does strongly indict the alleged perpetrator.

The IPTK does not have the record following the enquiry report. But, a report entitled "In search of vanished blood: the writ of habeas corpus in Jammu

⁶⁴ Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided. Information on this petition was sought again on 4 April 2014.

and Kashmir: 1990-2004” states that before the High Court the army challenged the testimony of the eye-witnesses. The High Court accepted the objections of the army, particularly on the issue of the alleged perpetrators name being mentioned by the witnesses without an indication of the source of knowledge.

The petition was disposed off with a direction to the Soura Police Station to register an FIR and investigate into the victim's disappearance. The High Court also dismissed the plea for compensation based on a lack of evidence to show the denial of a right to life.

The High Court's conclusions on the evidence are unfortunate. As stated above, the evidence of the witnesses do appear sound. While it is true that none of the witnesses provide the basis of their knowledge of Captain Yadav, the High Court could have taken other measures before summarily dismissing the witness testimony. For example, the enquiry report only provided a summary of the witness testimony. Perhaps the actual transcripts of the witness testimonies would provide more information.

Further, assuming the appropriate questions were not put to the witnesses during the enquiry, the blame must surely go to the enquiry officer conducting the enquiry and not the witnesses themselves. Further, inspite of the enquiry conducted on the directions of the High Court confirming the crime, the High Court has taken a strange position by dismissing the plea for compensation which it claims is due to lack of evidence to show the denial of a right to life. This decision appears to be not well thought out as in numerous other cases of enforced disappearances the High Court has ordered compensation.

Despite the passage of 15 years there appear to have been no investigations or prosecutions in this case. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 48

Victim Details

Fayaz Ahmad Beigh [Enforced Disappearance]
Age: 26/27
Occupation: Camera man, Department of Central Asian Studies, University of Kashmir
Son of: Abdul Rashid Beigh
Resident of: Nowshera, Srinagar

Alleged Perpetrators

1. Superintendent of Police [SP], Hans Raj Parihar, Operations, Awantipora, Jammu and Kashmir Police
2. Sub-Inspector [SI], Mohammad Amin, Special Operations Group [SOG], Jammu and Kashmir Police, Camp Lethpora, Awantipora,

Pulwama District

3. Head Constable Ratan Chand, Jammu and Kashmir Armed Police [JKAP]
4. Constable Abdul Rashid Trali [reportedly deceased], Special Operations Group [SOG], Jammu and Kashmir Police
5. Inspector Sudershan Sood [also referred to before the State Human Rights Commission (SHRC) as Sudershan Kumar], 90th Battalion, Central Reserve Police Force [CRPF]

Case Information

Fayaz Ahmad Beigh was abducted by the personnel of the SOG Camp, Lethpora, Awantipora, Pulwama District, from the University of Kashmir campus on 6 September 1997 at around noon. The victim was abducted along with his motorcycle, camera, cash of Rs. 4000, bank drafts and cassettes.

On the following day, SP Hans Raj Parihar along with CRPF personnel, headed by one Inspector Sudershan Sood raided the premises of the father of the victim. No recovery was made.

The family of the victim approached SOG officials through SP, Operations, Awantipora, Hans Raj Parihar, who after initial hesitance admitted that the victim was in the custody of STF/SOG personnel at Lethpora. Subsequently, the family of the victim received the victim's motorcycle in a broken condition. The family of the victim also approached Karnail Singh, SP, Operations, Pulwama and were given assurances regarding the victim. The victim has disappeared since.

The family of the victim filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, HCP 1411/1997⁶⁶] seeking the grounds of detention of the victim, registration of a case in the matter, and quashing of the false case registered at the Soura Police Station. This petition was withdrawn on 29 April 1998 following the complaint being admitted by the SHRC.

The family of the victim filed a complaint before the SHRC on 18 February 1998. The final decision was given on 3 April 2000 and Rs. 5,00,000 was recommended for the family of the victim.

Subsequent to the final decision of the SHRC, another petition was filed before the High Court [Original Writ Petition (OWP) 263/2001] seeking that the recommendations of the SHRC be implemented i.e. registration of a case, and payment of compensation. The Government of Jammu and Kashmir, in its submissions before the High Court, admitted that the victim had been abducted by the SOG and SP Hans Raj Parihar, but placed the date of abduction as 9 September 1997. Further, that the victim was detained at Kadalbal, Pampore. It was further submitted that the victim was taken by SI

66 Information on this petition was sought through RTI on 4 April 2014.

Mohammad Amin for recovery of arms and ammunition from University of Kashmir. Following the recovery of arms and ammunition from this location, and while on the way to Soura for further recovery, the party that was accompanied by CRPF personnel came under firing from militants at Nowhatta. During this firing, the victim escaped. First Information Report [FIR] no. 239/1997 u/s 307 [Attempt to murder], 224 Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition/possession/manufacture/sale of prohibited arms/ammunition]/27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 was filed at the Soura Police Station⁶⁷. Following the conclusion of investigations, the final report was produced in the court of the 2nd Additional Munsif, Srinagar. By communication dated 30 November 2013 from Jammu and Kashmir Police a copy of the chargesheet was provided. The High Court, in its final decision of 9 October 2003, disbelieved this version based on the SHRC final decision that considered it to be fabricated. The High Court held that a case was to be registered in the matter and that compensation recommended by the SHRC be paid to the family of the victim. The High Court stated that the proper quantum of compensation as per public law based on the facts and circumstances would be Rs. 2,00,000 payable within two months, but the Government of Jammu and Kashmir could choose to pay the SHRC recommended amount of Rs. 5,00,000. No specific detailed reasoning is provided on how the High Court arrived at the proper compensation amount.

Subsequent to the above proceedings, as per media reports, a contempt petition was filed in 2012. According to the reports, in May 2012, the Principal Secretary, Jammu and Kashmir Home Department, submitted that on 9 April 2012, the Deputy Commissioner, Srinagar had been asked to pay the balance compensation of Rs. 3,00,000. Further, the Director General of Police [DGP], Jammu and Kashmir, had been asked to implement the decision of the High Court and register a FIR in the case, take it to its logical conclusion, and take departmental action against the erring police officials involved in the custodial disappearance⁶⁸. It is unclear when the family of the victim received the Rs. 2,00,000 compensation. Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. Only information on OWP 263/2001 was provided.

The family of the victim once again approached the

SHRC on 27 May 2008, on the sole issue of compassionate employment under SRO-43 [Statutory Rules and Orders] that had yet to be processed. The SHRC, based on an assurance from the Government of Jammu and Kashmir that the SRO-43 benefits were being processed, disposed off the application.

The main document for analysis in the instant case is the SHRC final decision of 3 April 2000. But, the observations of the High Court in its final decision of 9 October 2003 may be briefly considered.

The High Court observed that:

“From the whole record an impression is fairly gathered that registration of FIR No. 239/97 is with the object of throwing a protective cover around the SOG police personal involved in custodial disappearance of Fayaz Ahmed Beigh to facilitate their escape from legal consequences which they may have to bear consequent upon 'disappearance' and 'not being heard of after arrest' of said Fayaz Ahmed, once he was taken in custody by the SOG Awantipora.”

The above observation provides further credibility to the SHRC final decision which may now be considered. The SHRC decision begins with the allegations of the family of the victim. Further, it is stated that the father of the victim approached Ali Mohammad Sagar, then Minister of Home, Jammu and Kashmir, who ordered an investigation by the Criminal Investigation Department [CID] of Jammu and Kashmir Police. The CID report dated 31 October 1997 stated that there was no ambush at Nowhatta as suggested in FIR no. 239/1997 filed at Soura Police Station. The decision also states that when the family of the victim approached SP Hans Raj Parihar they were informed that there was a demand of Rs. 15, 000 by “some agency”. The money was not paid.

SP Hans Raj Parihar, SI Mohammad Amin, Head Constable Ratan Chand, Constable Abdul Rashid Trali contested the complaint before the SHRC. They admitted that the victim had been arrested by the SOG at Kadalbal, Pampore, on 9 September 1997. Further, that under the orders of SP Hans Raj Parihar, a party headed by SI Mohammad Amin, and based on the disclosure of the victim, recovered arms and ammunition at the “University Campus”. Further, that on 10 September 1997 [though it is unclear whether the search and recovery at the University of Kashmir campus was also on the same day] the party, comprising of 30 personnel, including SI Mohammad Amin, Head Constable Ratan Chand, Constable Abdul Rashid Trali of SOG and Inspector Sudershan

67 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. By communication dated 7 August 2012 from the Jammu and Kashmir Police a copy of the FIR and investigation documents were provided and it was stated that the chargesheet had been produced in a court of law u/s 512 [Record of evidence in absence of accused] Criminal Procedure Code, 1989 [CrPC]. Further information sought through RTI on 15 October 2013.

68 Kashmir Global, <http://www.kashmirglobal.com/2012/05/27/14-year-old-custodial-disappearance-of-k-university-cameraman.html>, 27 May 2012.

Sood of CRPF, proceeded to Nowhatta where they came under firing. The victim escaped. It was further alleged that two persons: Ashaq Hussain and Tariq Ahmad Gujar had seen the victim in Delhi. SP Hans Raj Parihar also filed a separate response before the SHRC. In this response it was stated that he was not present at the SOG Headquarters on 6 or 7 September 1997. Further, that he never met the father of the victim and he did not inform him about a demand for money. He also denied that there was any search at the victim's house on 7 September 1997.

The SHRC then considered witness evidence and documentation as summarized below:

- The SHRC heard the evidence of witnesses Ghulam Mohi-ud-Din Malik, Ghulam Ahmad Beigh, Mushtaq Ahmad and Abdul Majid Beigh, who confirmed that it was SP Hans Raj Parihar and others who abducted the victim.
- Further, the SHRC also considered certificates issued by police authorities to the effect that on 6 and 7 September 1997, SP Hans Raj Parihar was on duty elsewhere. The SHRC did not find this information credible as it suggested that this line of defence should have been raised by SP Hans Raj Parihar when filing objections before the SHRC. Further, the SHRC considered the evidence of the two police authorities that issued three of the letters, who stated that the information was provided based on their "memory".
- The SHRC also considered the written statement, filed on 24 July 1998, of the Station House Officer [SHO], Nigeen Police Station. This written statement states that the SHO was informed of the abduction of the victim on 6 September 1997 and that on probing the issue it was found that the victim had been picked up by the SOG, Pulwama District. Further, the report of the abduction of the victim was entered in the records of the police station on 6 September 1997.
- The SHRC found that the evidence of SP Hans Raj Parihar unconvincing on his contention that he was not present when the arrest of the victim was carried out. Further, the SHRC noted his evidence that he was "holding over all charge of STF Camp Awantipora...so much so, that he was being made aware of even the minutest details".
- SI Mohammad Amin testified that "he learnt about the presence of Fayaz Ahmad Beigh on 9 September 1997, at Kadalbal Pampore and then he found him with unregistered Motor Cycle and then he was taken to Latipora [Lethpora] SOG Camp." Further, that he heard about the recovery of ammunition at the instance of the victim and the alleged firing upon the raiding party. The SHRC was critical of the role of SI Mohammad Amin in not making a written record of these events at the relevant time and concluded that there was evidence to suggest that the victim was not at Kadalbal, Pampore on 9 September 1997.
- Witnesses Abdul Aziz and Mohammad Ashraf

from Tral were also heard by the SHRC [presumably produced by SP Hans Raj Parihar, SI Mohammad Amin, Head Constable Ratan Chand, Constable Abdul Rashid Trali]. The SHRC noted that these witnesses, brought to prove the presence of the victim at Kadalbal, Pampore, on 9 September 1997, were not reliable as they did not even know who the victim was.

The SHRC concluded therefore that the victim was illegally arrested by SP Hans Raj Parihar, SI Mohammad Amin, Head Constable Ratan Chand, Constable Abdul Rashid Trali on 6 September 1997 from the University of Kashmir campus. The SHRC decision is therefore a clear indictment of SP Hans Raj Parihar, SI Mohammad Amin, Head Constable Ratan Chand and Constable Abdul Rashid Trali. Inspector Sudershan Sood of CRPF may also be considered indicted [though not explicitly by the SHRC] in light of the submissions of the alleged perpetrators before the SHRC that specifically name him as being part of the party on 10 September 1997.

The Jammu and Kashmir Police have deliberately chosen to ignore the High Court directives on the registration of a case for nine years which is an act of furthering support to the alleged perpetrators. Interestingly, this impunity is being provided to SP Hans Raj Parihar when he is already under trial in an infamous Ganderbal fake encounter case from the last five years. On the contrary, as per publicly available information, alleged perpetrator Hans Raj Parihar was awarded the Director General of Police's Commendation Medal for 2001.

Further, it appears that no action has been taken in the case by the CRPF despite the involvement of one their personnel. The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Case No. 49

Victim Details

1. Abdul Aziz [Enforced Disappearance]
Son of: Sher Mohammad
Resident of: Kotdhara, Rajouri District
2. Abdul Aziz [Enforced Disappearance]
Son of: Mohammad Hussain
Resident of: Kotdhara, Rajouri District
3. Mohammad Yousuf [Enforced Disappearance]
Son of: Raj Mohammad
Resident of: Kotdhara, Rajouri District

Alleged Perpetrators

1. Commanding Officer [Colonel] Mann Singh, 18th Dogra Regiment, Army

Case Information

In October 1997, Abdul Aziz, Abdul Aziz and Mohammad Yousuf were picked up from their houses and have disappeared since. It was reported in the media that the family believes that the Commanding Officer Mann Singh was responsible for the crime as the three victims used to work for him by getting him heroin across the border. The killing of the victims may have been to ensure that the heroin operation was not revealed⁶⁹. The family of the victims approached the State Human Rights Commission [SHRC] and a final decision was given on 22 July 2008.

The SHRC received a report from the Senior Superintendent of Police [SSP], Rajouri, dated 28 May 2008 that confirmed the abduction and killing of the victims by the 18th Dogra Regiment, while not specifically naming Commanding Officer Mann Singh. The report stated that it was believed that the bodies of the victims were buried at Peer Badaser, near Kacha post. This place was dug up on 19 June 2007, but the bodies were not found. Based on the above, the SHRC indicted the 18th Dogra Regiment and recommended Rs.5,00,000 each for the disappearance of the victims, and a registration of a case of kidnapping and murder against the concerned army personnel of the 18th Dogra Regiment.

No information exists on whether any investigations or prosecutions were carried out by the Jammu and Kashmir Police for a case that is 15 years old. Further, despite an indictment of the army by the SHRC, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

In 2013, it was reported in the media that no action had been taken following the SHRC recommendations⁷⁰. Further, and contradictory to the SHRC decision, it was reported that at one point the body of Mohammad Yousuf was exhumed, Deoxyribose Nucleic Acid [DNA] test was sought and the body was sent to the District Hospital Rajouri.⁷¹ In response to a RTI on Home Department empowered committee on SHRC recommendations, the Home Department by communication dated 24 March 2014 provided information on other cases, including the instant one. It was taken up in the 5th meeting on 22 July 2009. Here the Home Department states that relief cannot be paid as the DNA of the bodies does not match those of the relatives [this is ironic considering the same Home Department has refused to carry out DNA tests with regard to the unmarked and mass graves in Jammu and Kashmir].

Case No. 50

Victim Details

Bashir Ahmad Wani [Enforced Disappearance]
Age: 20
Son of: Ghulam Nabi Wani
Resident of: Mandakpal, Pampore, Pulwama District

Bashir Ahmad Bhat [Enforced Disappearance]
Age: 18
Occupation: Farmer
Son of: Fateh Bhat
Resident of: Mandakpal, Pampore, Pulwama District

Alleged Perpetrators

1. Inspector Pritam Singh, In-charge of Special Operations Group [SOG], Camp Lethpora, Jammu and Kashmir Police
2. Selection Grade Constable Gansham, Special Operations Group [SOG], Camp Lethpora, Jammu and Kashmir Police
3. S. M. Jingral [also referred to as S.M. Jindral or Gindral on occasion], Station House Officer [SHO], Pampore Police Station
4. Sub-Inspector [SI] Ashiq Hussain, Pampore Police Station, Jammu and Kashmir Police
5. Constable Riyaz Ahmad, Pampore Police Station, Jammu and Kashmir Police
6. Sub-Inspector [SI] Manzoor Ahmad, Pampore Police Station, Jammu and Kashmir Police
7. Sub-Inspector [SI] Abdul Rashid, Pampore Police Station, Jammu and Kashmir Police
8. Mansoor Ahmad, Munshi at Pampore Police Station, Jammu and Kashmir Police
9. Constable Bashir Ahmad, Pampore Police Station, Jammu and Kashmir Police

Case Information

The family of Bashir Ahmad Wani states that on 17 November 1997 they were asked to produce the victim at the Pampore Police Station, and specifically before SHO S. M. Jingral, by Ashiq Hussain and Constable Riyaz Ahmad. On 18 November 1997 the family produced the victim at the Pampore Police Station. The family was asked to return for the victim, four-five days later. The victim was not released as promised. Bashir Ahmad Wani has disappeared since.

The family of Bashir Ahmad Bhat states that on 22 November 1997, SHO S. M. Jingral came to the residence of the victim along with other police personnel and asked for the victim. On being informed that the victim was not at the house, the brother of the victim, Abdul Rashid Bhat was arrested and detained at the Pampore Police Station until the victim was

69 Greater Kashmir, <http://www.greaterkashmir.com/news/2007/Jun/21/3-rajouri-men-killed-in-fake-gunfights-51.asp>, 21 June 2007.

70 Kashmir Times, <http://www.kashmirtimes.com/newsdet.aspx?q=15826>, 28 April 2013.

71 Rising Kashmir, <http://www.risingkashmir.in/news/skeleton-of-fake-encounter-victim-surfaces-in-rajouri-45986.aspx>, 24 April 2013.

produced. On 24 November 1997, the victim was produced at the Pampore Police Station and was detained along with Abdul Rashid Bhat for a few hours after which Abdul Rashid Bhat was released. In these few hours, the victim told Abdul Rashid Bhat that he would stay in the jail and it was better that Abdul Rashid Bhat be released as he was the earning member of the family. The victim was taken to another location by SI Abdul Rashid after half an hour consultation with Mansoor Ahmad and Constable Bashir Ahmad. The family of the victim came to know that Bashir Ahmad Bhat and Bashir Ahmad Wani were seen at the SOG Camp, Awantipora, where they were kept for three days before being transferred to another location. The family of Bashir Ahmad Bhat made various efforts to trace the victim. Bashir Ahmad Bhat has disappeared since.

Both families state that large sums of money have been spent in trying to find the disappeared. Further, SHO S. M. Jingral has threatened the family of Bashir Ahmad Wani and asked them to withdraw the case filed.

The families of both victims filed habeas corpus petitions under Section 491 Criminal Procedure Code, 1989 (CrPC) before the High Court of Jammu and Kashmir [9/1998 and 10/1998].

In petition no. 9/1998, filed by the family of Bashir Ahmad Wani, by final order dated 14 July 1998, the High Court dismissed the petition based on a representation of the respondents that the victim had been released on 23 November 1997. But, on a Letter Patent Appeal [LPA no. 232/1998], the High Court bench on 4 August 2000 stated that the petition required rebuttal on affidavit by the respondents. On 13 March 2001, the bench hearing petition no. 9/1998 clubbed the two petitions [petition no. 9/1998 and 10/1998] together. On 7 August 2001, the bench hearing petition no. 9/1998 referred the matter for an enquiry by the District and Sessions Judge, Pulwama. But, on 23 July 2002, based on a submission by the petitioner in petition no. 9/1998 that the matter had been taken up by the State Human Rights Commission [SHRC] and a request that the petition be withdrawn, the petition was dismissed as withdrawn. Consequently, the enquiry was also closed on 6 August 2002.

In petition no. 10/1998, filed by the family of Bashir Ahmad Bhat, by final order dated 14 July 1998, the High Court dismissed the petition based on a representation of the respondents that the victim had been released on 23 November 1997. But, on a LPA filed [LPA no. 231/1998], the LPA bench on 4 August 2000 stated that the petition required rebuttal on affidavit by the respondents. But, based on a submission by the petitioner in petition no. 10/1998 that the matter had been taken up by the SHRC and a request that the petition be withdrawn, the petition was dismissed as withdrawn.

The families of the victims approached the SHRC which issued its final decision on 14 July 2001. The

SHRC recommended that a case of enforced disappearance of both victims be registered, and that Rs. 1,00,000 ex-gratia government relief be provided to both the families.

Following the non-implementation of the SHRC recommendations, both families filed Original Writ Petition (OWP) no. 37/2002 [and Interim Application no. 49/2002] before the High Court. On 4 February 2002 the High Court dismissed the petition directing that a first information report [FIR] be registered and that ex-gratia government relief as recommended by the SHRC be considered as per the rules. On further non-implementation of these directions the families of the victim filed contempt petition no. 255/2004 before the High Court. In response to the contempt petition, the Government of Jammu and Kashmir stated that they had not received the 4 February 2002 order of the High Court until the contempt petition had been filed on 29 November 2004. Further, that on receiving the order, FIR no. 98/2004 u/s 446 [House breaking by night], 464 [Making a false document] Ranbir Penal Code, 1989 [RPC] was registered at Police Station, Crime Branch, Srinagar and that the ex-gratia government relief was being speedily processed. On 4 October 2005 the High Court disposed the contempt petition based on the submissions of the Government of Jammu and Kashmir. On the issue of ex-gratia government relief, the High Court stated that the families could approach the Deputy Commissioner, who was the concerned officer.

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. No information was provided on contempt petition no. 255/2004. Information on the other petitions was provided. Information on the FIR was sought through RTI on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014. Information on petition number 255/2004 was sought again on 4 April 2014.

The Deputy Commissioner, Pulwama, in a letter dated 29 March 2005 to the Government of Jammu and Kashmir, confirmed that based on reports from the Superintendent of Police [SP], Awantipora and the Additional Deputy Commissioner, Pulwama, the two victims were not involved in any subversive activities. Both families received the Rs. 1,00,000 ex-gratia government relief each but are yet to receive compassionate employment under SRO-43 [Statutory Rules and Orders].

Before considering the findings of the SHRC on 14 July 2001, a few preliminary comments may be made:

- While the family of victim Bashir Ahmad Bhat refers to SI Abdul Rashid, Mansoor Ahmad and Constable Bashir Ahmad before the High Court, they have not been considered as accused persons before the SHRC [SI Manzoor Ahmad, alleged perpetrator no.6 is considered a respondent in the case while not extensively

referred to].

- The contention of the Government of Jammu and Kashmir in response to the contempt petition filed before the High Court that they had not received the 4 February 2002 order, and therefore not acted upon it, for more than two years is most unfortunate and unreasonable.

The SHRC based its 14 July 2001 order on submissions made by the parties and witnesses presented before the Commission. The Additional Director General of Police [ADGP], Criminal Investigations Department [CID], Jammu and Kashmir, stated that the two victims were summoned by the Pampore Police Station on 23 November 1997 for questioning, handed over to the SOG, Camp Lethpora, and released on the same day. Two persons – Jan Mohammad Rather and Ghulam Mohammad Ganai – witnessed the release. The respondents took a similar position. It was further stated that Selection Grade Constable Gansham took the victim to the SOG Camp at Lethpora, which was headed by Inspector Pritam Singh. The questioning was related to a killing of a General Manager of a cement factory at Khrew who was shot dead by militants.

Based on the above submissions, the SHRC first stated that the taking into custody of the two victims by the Pampore Police Station was not in dispute. The SHRC then proceeded to consider the issue of the release of the victims. It is unfortunate that the SHRC did not, at this stage, highlight the differences in the versions of the families of the victims and the police on the issue of taking into custody of the victims. While the police appear to suggest that the victims were taken into custody on the same day [23 November 1997] the families of the victim have a different version, as highlighted above.

Nonetheless, the SHRC proceeded to consider the issue of the release of the victim. The SHRC found that "...it cannot be said that the respondents have been in a position to discharge the onus of proving that Bashir Ahmad Wani and Bashir Ahmad Bhat were released by the SOG namely Pritam Singh at Lethpora SOG Camp."

The SHRC found that the evidence of the witnesses on the release were rendered doubtful by the testimony of "one of the most respectable and responsible citizens namely Malik Mohi-ud-din, ex-speaker [of the Jammu and Kashmir Legislative Assembly] and an advocate", a neighbor of Jan Mohammad Rather and Ghulam Mohammad Ganai. Jan Mohammad Rather and Ghulam Mohammad Ganai had also worked for Malik Mohi-ud-Din. Malik Mohi-ud-Din testified that both these persons were aligned with the armed forces and had a poor reputation in the area. Further, they were said to be persons who got children of well-off people arrested and then released for huge sums of money from the parents of the children.

Further, the SHRC found other reasons to disbelieve the evidence of the witnesses. Ghulam Mohammad Ganai testified that Inspector Pritam Singh had released the two victims on his request. But, he also stated, contradictorily, that alleged perpetrator 1 did not know him and in fact he, the witness, knew Inspector Pritam Singh "by face".

The SHRC also considered the testimony of Khazir Mohammad, brother of Ghulam Nabi Wani, to contradict the testimony of Ghulam Mohammad Ganai⁷².

Khazir Mohammad states that Ghulam Mohammad Ganai did not tell the SOG personnel that the two victims were innocent and should be released. Further, the witness states that the victims were not released in his presence.

The SHRC states the following in relation to Khazir Mohammad's testimony: "He has stated that SOG people were writing something on a paper which was signed by him and his companion (Ghulam Mohammad Ganai). They did not know where those boys had gone". The SHRC also stated that "Moreover, the so called personal bond alleged to have been executed by the boys which is on the file is only with regard to one of the boys namely Bashir Ahmad Wani. This too is a photocopy and has not been put to the witnesses as required..."

The SHRC therefore concluded that it could not be conclusively stated that the victims had been released and that an investigation was necessary to "fix the responsibility on the officer, officials of the Police manning the Police Station Pampore and the SOG Camp Lethpora in No. 1997".

The story regarding the release of the victim has been discredited by the SHRC enquiry. The witnesses in favor of the alleged perpetrators have produced inconsistent and contradictory evidence.

Based on the record available in this case and the testimony of Malik Mohi-ud-Din, it is clear that the armed forces and their civilian extensions have facilitated the practice of illegal detentions and unrecorded arrest and "release" of victims which leads to an unaccountable detention followed by torture, disappearance, extra-judicial executions, fake encounters and sometimes release of victims in return for money.

The SHRC decision, while confirming the police custody of the victims, and dismissing the release of the victims, serves as a clear indictment of the alleged perpetrators in the instant case.

Also of concern is that the police before the SHRC and High Court have not produced the formal records of the arrest and hand over of the victims to the SOG. Neither have formal release orders of the victims been released.

⁷² It is uncertain what role Khazir Mohammad played in the events in question. The discussion of his testimony would suggest that he was one of the eye-witnesses to the release of the victim. But, in earlier parts of the SHRC order, reference is made to Jan Mohammad Rather and Ghulam Mohammad Ganai.

Case No. 51Victim Details

Fayaz Ahmad Khan [Enforced Disappearance]
 Age: 24
 Occupation: Truck driver
 Son of: Haji Abdul Rehman Khan [deceased], Sara Akhter
 Resident of: Abidabad, Gamamdar, Pantha Chowk, Srinagar

Alleged Perpetrators

1. Major Yadav Prashad, 197th Battalion⁷³, Army, Camp Zakoora/ Ganderbal
2. Javaid Ahmad Reshi, Army informer
3. Mohammad Yousuf Akhoon, Army informer

Case Information

The family of Fayaz Ahmad Khan states that on the intervening night of 25 November 1997 and 26 November 1997, troopers of the 197th Battalion ["Roma Battery"] led by Major Yadav Prashad raided the house of the victim. After identifying the victim with the help of Javaid Ahmad Reshi and Mohammad Yousuf Akhoon, he was taken away. When the family asked Major Yadav Prashad why the victim was being taken away [the victim was suffering from bone disorder], they were told that he was being taken for questioning and would be released soon. Javaid Ahmad Reshi asked the family to come to Brain Nishat the next day. On the next day the family went to the Pantha Chowk Police Station and complained of the victim's abduction. The police did not file any report.

Subsequently, Javaid Ahmad Reshi visited the victim's house and asked for Rs. 40,000 for the victim's release. The family told him that they had already sent persons, including one of the brothers of the victim, to give him the money at Brain Nishat.

Further, when the brother of the victim met Javaid Ahmad Reshi, he asked him to prove that he knew the whereabouts of the victim. Javaid Ahmad Reshi then brought the watch and identity card of the victim as proof. The family paid Rs. 10-12,000 to the informer.

Two days later, the family states that with the help of a Kashmiri Pandit named Bitta, they went to the Zakoora Camp of the 197th Battalion of the army and asked Major Yadav Prashad to release the victim, and they were told that he would be released the next day. After some time, during which the family of the victim visited the camp asking for the victim, the Zakoora Camp was shifted to a place near Nuner, Ganderbal. The family of the victim visited this camp. Subsequently, the family of the victim also went to the headquarters of the army implicated at Kangan. They met with Brigadier Malhotra who informed them that the victim had been

released and may have gone to Pakistan Occupied Kashmir.

The family of the victim informed the Nishat Police Station about the abduction of the victim by Javaid Ahmad Reshi and Mohammad Yousuf Akhoon who were from Nishat. The body of the victim has not been found to date.

The family of Fayaz Ahmad Khan gave a statement to the IPTK on 9 March 2012.

According to the victim's family, while information on the incident was provided to the Pantha Chowk and Nishat Police Stations, no first information report [FIR] was filed.

The family of the victim approached the State Human Rights Commission [SHRC] and in their application to the SHRC, the victim's family recounts the events surrounding the abduction in a manner similar to the allegations above, but refers to Major Yadav Prashad as being from the 197th Battalion, Army Camp at Nuner Kangan, Ganderbal. On 25 November 1999, Nodal Officer, Police Headquarters [PHQ], Kashmir Zone, Srinagar, forwarded a letter dated 11 November 1999 from Superintendent of Police [SP], Srinagar city, East Zone to the SHRC. This letter states that a report was sought from the Station House Officer [SHO], Pantha Chowk Police Station and was received. This report confirms that there existed no FIR or missing persons report. The report further states that following verification it was found that on 26 November 1997 at about 11:00 pm army personnel raided the victim's house and took him along. On the following day, 26 November 1997 [thereby suggesting that the raid took place on the intervening night of 25 and 26 November 1997] the father of the victim, Ali Mohammad Khan and Ghulam Mohammad Ganie went to the army camp at Brain Nishat. They met two surrendered militants: Javaid Ahmad Reshi and Mohammad Yousuf Akhoon, who demanded Rs. 10,000 for the release of the victim. Rs. 3000 was paid to them. On the following day when they returned to the camp, the in-charge of the camp, Major Yadav Prashad was not present. A few days later they met Major Yadav Prashad who assured them of the release of the victim in his custody. But, the victim was not released. The letter of 11 November 1999 also confirms that the victim was a surrendered militant. The family of the victim filed a rejoinder to this report and maintained their earlier position.

Also on record are affidavits by Abdul Ahad Baba, neighbour of the victim, and Abdul Aziz Khan, brother of the victim. Abdul Ahad Baba confirms the abduction of the victim by the army. Abdul Aziz Khan's affidavit closely matches the more recent statement to the IPTK. He confirms that the abduction was undertaken by the 197th Battalion of the army led by Major Yadav Prashad and accompanied by Javaid Ahmad Reshi [whom he refers to as "Javid Auto"] and Mohammad

73 Possibly a part of the Territorial Army, but not expressly stated as such in the documents available.

Yousuf Akhoon. He states that Rs. 40,000 was demanded for the release of the victim, but only Rs. 4000 was paid. This matter was subsequently placed before the National Human Rights Commission [NHRC] on 14 June 2000.

The family of the victim also filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, HCP 94/1998] against the Union of India, Commandant of the Romo Battalion, Zakoora camp and Major Yadav Prashad, Commanding officer, 197th Battalion, Nuner Kangan camp.⁷⁴ The petition sought registration of an FIR, release of the victim and compensation of Rs. 5,00,000. In this petition, while repeating the family account of events, there is also a reference to a meeting with “Brigadier and Major and Commanding Officer Pretem Singh” at the Nuner Kangan, Ganderbal camp. They were assured that the victim was healthy and would be released soon. The petition also states that news reports of the incident were released by the family of the victim. Further, that the respondents denied the contents of the reports and stated that the victim had come to the camp along with Javaid Ahmad Reshi and promised to show the respondents an “arms dump”. Based on this promise he left and never returned to the camp. The family of the victim denied this version of events in the petition. The petition further states that on the night of the abduction the victim was taken to the Central Jail, Srinagar, and was confronted with another detainee: Gulla Sheikh. Further, the Central Jail records, the family of the victim states in the petition, confirm this. The petition goes on to state that on 26 and 27 November 1997 the victim was taken to the house of Manzoor Ahmad Ahanger, where he was tortured by Major Yadav Prashad. The Union of India and Commandant, Romo Battalion, Zakoora responded to this petition before the High Court and stated that there was no officer by the name “Major Yadav Prashad” posted in the respondents unit. That the victim was a casual source for the army who informed them that he had some information for them. A unit of the army went to his house and collected him. The victim accompanied them voluntarily. With a promise to return with more information, the victim left the army unit on 30 November 1997.

The victim was an ex-company commander of Hizbul Mujahideen and continued to maintain links with them. Further, the victim had two murder cases pending against him and he may have planned to disappear.

The Court of Sessions Judge, Srinagar, pursuant to the High Court order of 3 November 1998, conducted an enquiry and issued its final decision on 27 March 2000.

The Counsel for the Union of India initially appeared before the enquiry but then subsequently abstained from the proceedings. Respondents no.2 and 3 [Commandant, Romo Battalion, Zakoora and Major Yadav Prashad, Commanding officer, 197th Battalion, Nuner Kangan camp] submitted objections to this enquiry report. They stated that they had not received notice to appear before the enquiry. Further, that notices issued to “Romo Battallion, Zakoora” or “Major Yadav Prashad” had no value as neither the Romo Battallion, Zakoora, nor Major Yadav Prashad of the 197th Battalion Field Regiment, existed.

Further, the evidence of the witnesses before the enquiry were denied. The High Court dismissed the petition on 21 May 2002 and returned the matter for a fresh enquiry based mainly on the fact that the respondents had not been served notice.

Before analyzing the documents on record, a few preliminary remarks need to be made:

- There are discrepancies in the recent statement of the family of the victim, and past statements, with regard to the amount of money demanded and paid for the release of the victim, but this would appear to be a minor discrepancy.
- In the statement to the IPTK the family of the victim states that they met with Javaid Ahmad Reshi in his residential area in Brain Nishat. But, the letter dated 11 November 1999 from SP, Srinagar city, East Zone to the SHRC states that the family of the victim and others met Javaid Ahmad Reshi and Mohammad Yousuf Akhoon at the “Army Camp” at Brain Nishat.
- Further, reference in the petition filed by the family of the victim before the High Court to the victim being taken to the Central Jail and then being tortured on the following day at Manzoor Ahmad Ahanger's house is uncorroborated. But, similarly, the counter suggestions of the Union of India and the army before the High Court on the victim accompanying the army and then leaving on 30 November 1997 remain unsubstantiated and unconvincing as the armed forces regularly ignores standard operating procedures for arresting or launching any anti-militancy operations.

The letter dated 11 November 1999 from the Superintendent of Police [SP], Srinagar, East Zone confirms that the victim was in the custody of the army. Further, the use of the word “raided” in this letter strongly suggests that the victim would not have accompanied the army unit voluntarily. The involvement of Javaid Ahmad Reshi and Mohammad Yousuf Akhoon is also clear vis-à-vis demand of money for the release of the victim. The involvement of Major Yadav Prashad is also clear from this letter as he assures the family of the victim that the victim

74 Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. Information was provided.

would be released.

In addition, one may consider the enquiry by the Court of Sessions Judge, Srinagar of 27 March 2000. Before the enquiry, five witnesses testified. Relevant portions of their evidence are as below:

- Abdul Aziz Khan stated that on the intervening night of 25 and 26 November 1997 the victim was abducted by Major Yadav Prashad. The victim was handcuffed. On the following day, alleged perpetrator no.1 promised the release of the victim on 30 November 1997. The witness referred to alleged perpetrator no.1 as "Major Parshad".
- Ali Mohammad Khan confirmed the evidence of Abdul Aziz Khan.
- Mohammad Shafi Ganaie, testified that army unit of the 197th Battalion arrested the victim on the intervening night of 25 and 26 November 1997. Subsequently, alleged perpetrator no.1 promised the release of the victim on 30 November 1997. He referred to alleged perpetrator no.1 as "Major Yadav".
- Abdul Rashid Mir testified that "army people under the command of Major Yadav" came during the night and arrested the victim. The witness also stated that he knew Major Yadav well as he was posted at "Khunmuh camp" prior to his posting at the Zakoora camp.
- Abdul Rashid, brother of the victim, testified in a manner similar to Abdul Aziz Khan and Ali Mohammad Khan. But, this witness specifically referred to the alleged perpetrator no.1 being from the 197th Battalion. He also referred to alleged perpetrator no.1 as "Major Parshad".

The enquiry judge noted that "the respondents did not choose to rebut the evidence produced by the petitioner". The enquiry judge concluded that "Major Parshad Yadav" and his army personnel had arrested the victim on 25 and 26 November 1997

The evidence before the enquiry judge clearly indicts Major Yadav Prashad in the abduction of the victim. But, there exists a contradiction on when exactly the family of the victim met Major Yadav Prashad following the arrest of the victim. Before the enquiry judge the suggestion is that this meeting took place on the day following the arrest. But, in the petition filed before the High Court, this meeting is supposed to have taken place on 28 November 1997. Further, the role of Javaid Ahmad Reshi and Mohammad Yousuf Akhoun does not come out in the enquiry report at all.

As stated above, objections were filed to this enquiry report. While the objections regarding notice are countered by the enquiry report itself which states that notice was served to the Union of India [whose counsel was present initially], the contentions that neither the Romo Battallion, Zakoora, nor a Major Yadav Prashad, existed, are more substantive.

The approach of the High Court in returning the matter for a fresh enquiry requires comment. The police letter

of 11 November 1999 and the enquiry report clearly suggest the abduction of the victim.

Further, Major Yadav Prashad is specifically indicted. The correct procedure would have been for the High Court to order for the institution of an FIR and monitor the investigations. Clearly, a constitution of a new enquiry would serve little purpose. The family of the victim, and other witnesses, provided the information they had. Objections to this information were also on record.

Crucially, the position of the Union of India and the army is not that the victim was not known to them, and in fact confirms that the victim visited the camp. The dispute is on whether he was arrested or whether he visited the camp voluntarily, and whether he was in fact released on 30 November 1997. These are issues of fact that could be best ascertained by a thorough investigation, and possibly a trial.

In conclusion therefore, what appears clear is the abduction of the victim.

The role of Major Yadav Prashad is particularly clear whereas Javaid Ahmad Reshi and Mohammad Yousuf Akhoun, while indicted by the family of the victim in the abduction as well, appear, atleast on record, to have more of a role post the arrest of the victim. What is perhaps unfortunate in this case is the reluctance of the High Court, based on the record presently available, to order for the registration of an FIR.

Therefore, despite the passage of 15 years the perpetrators of the crime have been able to evade justice. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 52

Victim Details

Abdul Majid Guroo [Enforced disappearance]
Age: 35
Occupation: Bandsaw mill and timber business
Son of: Ghulam Mohammed Guroo
Resident of: Seer Road [near law college], Sopore, Baramulla district

Alleged Perpetrators

1. Mohammed Yousuf, Special Operations Group [SOG], Jammu and Kashmir Police
2. Nazir Ahmed Kandroo, resident of Sher Colony, Sopore, Government Gunman [Ikhwan] [deceased]
3. Ghulam Mohi-ud-din Dar, resident of Droosu, Watergan, Government Gunman commander [Ikhwan] [deceased]

Case Information

At about noon on 22 December 1998, the Special Operations Group [SOG] personnel cordoned off the house of victim. Government gunmen [Ikhwans], including Nazir Ahmad Kandroo, accompanied the SOG. A police official, Mohammad Yousuf, was also present. He was heading the SOG raid.

A day prior to the cordon, Abdul Majid Guroo's business associate, Fateh Mohammad Gazi, had come home and paid Rs. 1000 that he owed the victim.

On the day of the cordon, Fateh Mohammad Gazi came for lunch along with Riyaz Ahmad. Once the SOG cordoned the house, the victim was called out and taken away in a gypsy. At that point, another person, Mohammad Ashraf Peer, was also present there. He too was taken away by the SOG.

During this incident, Habla Begum was at the hospital and she returned only after the abduction of Abdul Majid Guroo and Mohammad Ashraf Peer. Those present at home explained to her that both of them were taken by the SOG, along with Nazir Kandroo, Fateh Mohammad and Riyaz Ahmad. The victim's mother, Zeba Begum, and his two daughters – Mehjabeen and Mehnaz – witnessed the actual abduction. The SOG informed those at home that the victim would be released soon. After returning home and learning of the abduction, Habla Begum went to the police station and lodged a complaint. No FIR was filed.

The following day, she went to the SOG camp at Kralhaar, Baramulla [near Kanispora]. The Ikhwans would usually stay at this camp. On that day, the CRPF personnel who were present there informed Habla Begum that the victim had been taken to Baramulla.

On the second day of the arrest, the victim was brought home by the SOG along with Nazir Kandroo and Riyaz Ahmad. When the victim was brought home, Ghulam Mohi-ud-din Dar, the leader of the Ikhwans, was present [he was later killed by unidentified gunmen three years later]. He had bruises on his eyes and was limping. He asked his mother and brother, Ghulam Qadir Guroo, to arrange Rs. 12,000 for his release by 4 pm. However, they were unable to do so. On the following day, the family went with the money to the Kralhaar camp and offered the money. But the SOG personnel present refused to accept the money and denied that any one was detained in the camp.

They then went to the SP Baramulla and met a person named Jalla. He informed the family that the victim was critical and was in a security hospital. He suggested that the family make an application and seek a meeting with the victim. They applied for a meeting. Also, around a week after the victim's arrest, the family met SSP Baramulla, Mushtaq Sadiq, at the police headquarters, Baramulla. He said he would enquire into the matter.

Meanwhile, Mohammad Ashraf Peer was released after seven days of his arrest. He was released from police headquarters, Baramulla. Mohammad Ashraf Peer did not share any information and merely said that following their arrest they were kept separately. Habla Begum believes he may have been threatened to keep silent. [When the IPTK met with him, he offered very little information.]

One and a half months later, the family once again met Mushtaq Sadiq. He said he could not give what the family of the victim wanted – whereabouts of the victim. But, instead, he asked them how much money they needed. He said he could provide jobs to both of the victim's children. He asked Habla Begum to forget about her husband. Habla Begum rejected the offer of money and jobs. Mushtaq Sadiq then asked her to leave.

About six months after this, the family of the victim went to the Divisional Commissioner, Khursheed Ganai, in Srinagar. This was done in the form of a protest. He called Deputy Commissioner Baramulla, SSP Baramulla and other officials to his office, but they did not admit to anything. He told Habla Begum that she had approached him late and he could not find her husband. But, he processed her ex-gratia relief and she received Rs. 1 lakh. Further, the Divisional Commissioner also ordered that SRO 43 be provided [on 6 November 2007, it was sanctioned by Deputy Commissioner Baramulla] but to date that has not happened due to a problem with Habla Begum's educational qualifications. The school stated that the records had been gutted in a fire and therefore there was no way to substantiate the claims of her educational qualifications. She now hopes her son may receive the SRO 43. The ex-gratia relief was processed around 1.5 years after the incident by the authorities.

About four months after the incident, Jalla took the family from their home in his gypsy car to the District Police Lines, Baramulla and had their statements recorded. Further, a few years later, police from the Bandipora police station came to their house and told them that four dead bodies had been recovered from the forest department office. Mushtaq Sadiq had apparently sent them. But, the family did not go to identify the bodies as many years had passed.

Habla Begum states that the day her husband was brought home by the SOG he had said that he believes that Fateh Mohammad Gazi was behind his abduction as Fateh owed the victim money. Also, on the day of the abduction, Fateh Mohammad kept going in and out of the house. He appeared to be expecting the SOG. She also adds that some locals had identified the registration number of the gypsy car.

Fateh Mohammad Gazi is still alive as is Riyaz Ahmad. But, Nazir Kandroo was shot dead later.

The wife of the victim, Habla Guroo, gave the above

statement to the IPTK on 8 April 2014.

On file is FIR no. 69/1999 under sections 344 [wrongful confinement] Ranbir Penal Code [RPC] filed at Sopore Police Station dated 6 March 1999. The FIR mentions that the informant, Ghulam Qadri Guroo, came to complain about a case of wrongful confinement of Abdul Majid Guroo by Nazir Ahmed Kandroo, Fateh Mohammed Gazi, and Mohammed Yousuf. Statements of the wife and brother of Abdul Majid Guroo are enclosed. Information on this FIR was sought through RTI dated 14 November 2014. By communication dated 5 January 2015 from the Jammu and Kashmir Police a copy of the FIR was provided and information that the case was under investigation.

On record is a communication dated 24 February 2000 from the Divisional Commissioner, Kashmir, Khursheed Ganai, to the Deputy Commissioner Baramulla asking that relief be paid to the victim's family. This letter refers to the victim being abducted by "unidentified gunmen". Further, the letter states that the police may not have given a report on time as the initial allegations were against them.

The role of alleged perpetrator 1-3 is made out by the testimonies. The role of the civilians alleged to be involved would require to be investigated further. Further, the role of SP Mushtaq Sadiq must also be investigated. First, he is the SP of the district and the allegations of disappearance are against personnel under his effective control. Further, as seen in the testimony he appears to be in knowledge of the disappearance of the victim. Finally, the role of the administration in assisting in cover ups is brought out by the Divisional Commissioners communication. The Divisional Commissioner is aware of the manner in which relief is used as a tool to ensure impunity for prosecution. Despite acknowledging this there is no further action taken against the police.

Case No. 53

Victim Details

Riyaz Ahmad Tantray [Enforced disappearance]
Age: 26
Occupation: Shopkeeper
Son of: Ali Mohammad Tantray
Resident of: Krusan, Lolab, Kupwara district

Alleged Perpetrators

1. Major Ashwani Kumar, 24 Rashtriya Rifles [RR], Panzoo Camp

Case Information

On 28 August 2000, at about 1 pm, the victim was at his shop in Kupwara town. The shop, a readymade garment shop, was located near the public park on Jamia road. The army personnel arrived in a small vehicle with mud on the number plate. They got off the

vehicle and entered the victim's shop. Ghulam Rasool Ganaie [son of Abdul Aziz, resident of Sogam], son-in-law of the father of the victim provided this information to the interviewee.

The army personnel told Riyaz that "Sahab" [Sir] is calling. As soon as the victim went near the vehicle, the army personnel opened the door and bundled him inside, and then drove away. Ghulam Rasool tried to note the number plate of the vehicle but as there was mud on it he could not. Ghulam Rasool then informed the Masjid Committee that Riyaz had been taken by the army; people gathered in the market and started a protest against the arrest of Riyaz. The police arrived on the spot and said they would ascertain the whereabouts of the victim. The following day, the market once again remained closed. Then the police registered a case.

After a few days, the father of the victim along with 20-25 shopkeepers went to the Chairkoot camp of 31 Rashtriya Rifles [RR] and asked the Commanding Officer [CO] about Riyaz. The CO initially said he would try and ascertain the whereabouts of the victim but then he started rebuking them and asked them not to come back to the camp.

The father of the victim, along with the others, then went to the 24 RR camp at Panzoo village. This was based on information that they had received from a farmer from the Panzoo area who said that he had seen a young man tied with rope being carried to the Panzoo camp in a small vehicle on 28 August 2000. The group arrived at the Panzoo camp and met with Major Ashwani Kumar. For many days, Major Ashwani Kumar told them that he would try and ascertain the whereabouts of the victim.

One day however, he asked the father of the victim to return the next day and that a meeting would be arranged with the victim. The following day, the father of the victim went along with his wife, to the camp. They took fruits and two Khan Dresses for the victim. On arriving at the camp, they saw that Major Ashwani Kumar was not present there. Later in the evening when the Major arrived, he asked them why they had brought fruits and clothes. The parents of the victim said that these things were for Riyaz upon which Major Ashwani Kumar replied that the army had such provisions with them, and asked the parents of the victim to take these things back with them. The Major then asked a Matador driver to drop the couple at Mangapora where they had relatives.

Subsequently, the father of the victim met with the CO of 24 RR, camped at Magam. This meeting took place about one month after Riyaz had been picked up. He told the father that he would try his best to ascertain if the 24 RR had picked Riyaz up. In the meantime, Major Ashwani Kumar arrived at the camp. The father of the victim told the CO that it was Major Ashwani Kumar who had detained the victim, as he had asked him to appear for a meeting with the victim. Major

Ashwani Kumar, on hearing this, abused the father of the victim. The CO, who was very young, said he would search for Riyaz.

After about 10-12 days, the father of the victim again visited the Magam camp and asked the CO about Riyaz. The CO said he had tried but could not find the victim. After this, the father of the victim stopped visiting this camp.

The father of the victim is certain that on the day that Major Ashwani Kumar had called for the meeting, the victim was in his custody. A local person in the Panzoo area, who used to work as a laborer in the 24 RR camp at Panzoo, also provided the father of the victim some information. He said that he saw a young person, who was in army custody, being brought close to the fire for warmth. When this person described the appearance of the person he had seen in the camp, the father believed that it was Riyaz. The laborer said that the person was occasionally brought into the compound of the camp where there was fire. The laborer also saw this person being questioned by Major Ashwani Kumar. The person was replying to the questions but was also crying constantly.

The father of the victim was advised by some people to meet with a person named Ali Mohammad Mir, Numberdar of Rishipora village. Ali Mohammad was said to be good friends with Major Ashwani Kumar. The father of the victim met Ali Mohammad and requested him to intervene in the matter. Then one day he accompanied the father of the victim to the Panzoor camp. The father of the victim waited outside the camp, as Ali Mohammad Mir went inside to meet Major Ashwani Kumar. He was inside the camp for about 45 minutes. As Ali Mohammad came out of the camp, he was smiling and said that Riyaz was fine and would be released. He also asked the father of the victim to sacrifice a bull as Riyaz was fine and had not been killed. Ali Mohammad Mir visited the Panzoo camp on 5-7 other occasions but no new information was received.

On the last occasion that he went to the camp at the interviewee's behest, Ali Mohammad Mir told the father of the victim that he was unable to meet Major Ashwani Kumar, as he was not at the camp. He told him that from now on he would no longer accompany the father of the victim to the camp. The father of the victim had promised Ali Mohammad Mir, Rs. 50,000 if he assisted in getting Riyaz released but, when he later said that he could not help, he did not take any money. Ali Mohammad Mir is still alive and lives at Heri Rishipora. When the father of the victim met Ali Mohammad Mir he saw Mir holding a gun. The father of the victim believes that he was working with the army.

The nephew of the father of the victim, Ghulam Nabi Tantray, was working in Uttar Pradesh as a shawl seller. In 2007, another person from their village, Afzal Mir, was also working there, had a customer who was

lodged in the Agra jail. When Afzal's customer was released, Afzal went to meet him. This person basically owed some money to Afzal. During their conversation, the customer said that in Barack no.5 there was a person detained, who was from Kupwara, Kashmir and that this person when called Pakistani used to respond by saying that he was not Pakistani, but was a shopkeeper from Kupwara.

The nephew of the victim, Ghulam Nabi, along with his colleague Farooq Ahmad Malik, went to Agra jail at 4:50pm. There they sought a meeting with Riyaz and a slip bearing Riyaz's name was taken inside. They were asked to wait as the name slip was stamped inside and they were asked to return the next day. Another person who was outside, and had come to meet someone detained, also told Ghulam Nabi that Riyaz was fine. But, the next day, they were informed that there was no one called Riyaz in the jail.

Then the father of the victim along with his sons: Bashir Ahmad and Mohammad Amin, and a relative Master Fayaz, went to meet the released detainee who had first provided the information on Riyaz. When they met him, he immediately said that the person detained resembled Bashir and Amin. Then, the father of the victim visited the Agra jail. There they showed a photo of Riyaz to a woman employee. She confirmed that Riyaz was in jail, based on the photo. She also said that this person had been there for four and a half years and she asked where they had been all this time. Then a policeman came out with his file. He said that the registered name is Riyaz Ahmad, son of Ali Ahmad Bhat. The father of the victim said that the correct details are actually Riyaz Ahmad, son of Ali Mohammad. The policeman went inside saying he would make the correction. But, they were not called for the meeting.

For 3 months, they continued to try for a meeting at the jail. Then Bashir and Amin met an Intelligence Bureau person who said he would help arrange a meeting. But, he was unable to do it for three months. But, he did take money from the family of the victim. In these three months, the family spent Rs. 1, 63,000.

A few days after the abduction, the police took statements of the shopkeepers and Ghulam Rasool Ganaie. The father of the victim filed an application before the SHRC.

The father of the victim, Ali Mohammad Tantray, gave the above statement to the IPTK on 14 November 2013.

This case rests on the evidence of numerous witnesses that have seen the victim being taken to the army camp, and being questioned and kept in custody at the army camp. The father of the victim has provided a strong statement of his interactions with the alleged perpetrator. The police does not appear to have carried out any investigations in this case.

Case No. 54Victim Details

Mohammad Shaban Sofi [Enforced Disappearance]
 Age: 38
 Son of: Amber Sofi
 Resident of Sofigund, Tral, Pulwama District

Alleged Perpetrators

1. Major Parkash, Mahar Regiment, Army, Camp Satwara

Case Information

First Information Report [FIR] no.111/2002 u/s 364 [Kidnapping / Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Tral Police Station⁷⁵.

The FIR refers to the disappearance of Mohammad Shaban Sofi and implicates Major Parkash. The FIR states that the victim was taken to the army camp on 1 February 1998 and has disappeared since. This appears to contradict with the other information on the FIR that suggests that the date of the incident was 4 September 1998.

Despite the passage of 10 years, it appears that the investigations in this case are still ongoing.

Further, the army appears to care very little for the possibility that one of its personnel may be involved in the commission of a crime as the available documents do not suggest that even a Court-Martial was conducted in this case by the army against Major Parkash.

Case No. 55Victim Details

1. Mohammad Younis Khan [Enforced Disappearance]
 Son of: Mohammad Lateef Khan
 Resident of: Uri, Baramulla District
2. Abdul Hameed Khan [Enforced Disappearance]
 Son of: Mohammad Lateef Khan
 Resident of: Uri, Baramulla District
3. Mohammad Lateef Khan [Torture]
 Resident of: Uri, Baramulla District

Alleged Perpetrators

1. Subedar Harindran / Harvinder Singh / Harendran Singh, 28 Madras Army / 28 Rashtriya Rifles [RR], Army⁷⁶
2. Havaladar Rajan, 28 Madras Army / 28 Rashtriya Rifles [RR], Army

Case Information

On the intervening night of 19/20 August 1998, as per FIR [but 5 August 1998, as per the documents relating to sanction for prosecution], Mohammad Lateef Khan was tortured [as per the sanction documents], and his sons, Younis Khan and Hameed Khan, were disappeared in custody.

First Information Report [FIR] no. 83/1998 u/s 365 [Kidnapping / Abducting with intent to secretly and wrongfully confined] was filed at the Uri Police Station⁷⁷. By communication dated 22 May 2012 from the Jammu and Kashmir Police information was provided that the case was under investigation and that the FIR was misplaced. The FIR, subsequently provided, states that Mohammad Lateef Khans two sons: "Abdul Hameed" and "Mohammad Younus" were picked up and disappeared by the army in Uri. The FIR states that the incident was registered in the police station 16 September 1998, but the FIR was filed only on 22 September 1998 on the behest of the Director General of Polices letter. The FIR states that the incident took place on the intervening night of 19/20 August 1998. There is no mention of the torture of Mohammad Lateef Khan.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that that it was under consideration

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under AFSPA, stated on 6 September 2011 in relation to this case that sanction was sought on 22 May 2009 and was awaited.

The Ministry of Defence, in response to an RTI on on sanctions for prosecution under AFSPA, stated on 10 January 2012 in relation to this case that it was under examination.

⁷⁵ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. RTI filed on 18 December 2012 to Jammu and Kashmir Police regarding custodial killings in Jammu and Kashmir between 1989 and 2012. By communication dated 1 January 2013 information was provided that the case was under investigation, and a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. By communication dated 7 November 2013 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI dated 14 November 2014.

⁷⁶ The documents from the Government of Jammu and Kashmir and the Ministry of Defence contain different information on the name of alleged perpetrator no.1 and the unit of the alleged perpetrators. All available information has therefore been listed.

⁷⁷ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. Further information sought through RTI on 15 October 2013. By communication dated 30 November 2013 from Jammu and Kashmir Police a copy of the FIR was provided. By communication dated 22 April 2014 from the Jammu and Kashmir Police a copy of the FIR was provided. Further, it was stated that the case was under investigation. Further information sought through RTI dated 14 November 2014.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir 11 years to investigate and process the case for acquiring sanction for prosecution under AFSPA, which apparently helped the perpetrators in evading justice.

It also needs to be investigated how the FIR was misplaced in this case by the Jammu and Kashmir Police, only to be subsequently found [communication dated 30 November 2013]. The investigations would need to ascertain whether this is a case of negligence or an attempt to cover up the matter.

Further, the Ministry of Defence, despite the passage of three years, is further delaying the processes of justice by not taking a decision on the issue of sanction for prosecution under AFSPA.

Finally, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 56

Victim Details

1. Qadir Lone [Enforced Disappearance]
Residents of: Warnoo Lolab, Kupwara District
2. Rahem Lone [Enforced Disappearance]
Resident of: Warnoo Lolab, Kupwara District

Alleged Perpetrators

1. Lieutenant Deepak Mohania, 9 Rajputana Rifles

Case Information

On 20 August 1998 the victims were picked up and have since disappeared.

First Information Report [FIR] no. 99/1998 u/s 365 [Kidnapping / Abducting with intent to secretly and wrongfully confine] was filed at the Uri Police Station⁷⁸.

Based on the 22 May 2012 communication received from the Jammu and Kashmir Police the case has been closed by declaring the perpetrators as untraced. By communication dated 6 January 2015 information was provided that this case was closed as untraced on 30 September 2009. According to this communication, the police was unable to find the copy of the FIR in the records. By communication dated 30 November 2013 from Jammu and Kashmir Police a copy of the FIR was provided. A separate RTI was filed

regarding all FIRs against the State forces. By communication dated 25 December 2013 from the Jammu and Kashmir Police a copy of the FIR was provided. Information was provided that the case was closed by declaring the perpetrators as untraced on 30 September 2009. By communication dated 22 April 2014 from the Jammu and Kashmir Police a copy of the FIR and police communication was provided.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it had been received but sanction had been declined.

The Government of Jammu and Kashmir, in response to a request for information under the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions, stated on 6 September 2011 in relation to this case that sanction had been sought.

The police investigations into the enforced disappearance of these two persons which led to seeking sanction for prosecution under AFSPA against Lieutenant Mohania was disregarded by the Ministry of Defence and sanction was declined.

Surprisingly, this decline of sanction led to the police disregarding its own investigations and hence closing the case by declaring the perpetrators as untraced.

It also needs to be investigated the circumstances that led to the FIR being misplaced, and whether this was a case of gross negligence or an attempt to cover up. This, particularly when, subsequently, the FIR seems to have been located.

Case No. 57

Victim Details

Mohammad Syed Rathore [Enforced Disappearance]
Occupation: Miller/working with 8th Battalion, Jammu and Kashmir Light Infantry [JAKLI], Army
Spouse: Khadam Jan
Son of: Mohammad Arif Rathore
Resident of: Shahpora, Haveli, Poonch District

Alleged Perpetrators

1. Captain Mohit, 8th Battalion, Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Shahpur, Haveli, Poonch
2. Subedar Balraj, 8th Battalion, Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Shahpur, Haveli, Poonch

⁷⁸ Information on this FIR was sought through RTI on 7 October 2011. On 22 May 2012 a response was received and information was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

Case Information

Mohammad Syed Rathore, working for the 8th Battalion JAKLI, was picked up and disappeared by Captain Mohit and Subedar Balraj of 8th Battalion JAKLI, Army, Shahpur Camp, Haveli, Poonch.

The family of Mohammad Syed Rathore approached the State Human Rights Commission [SHRC] on 3 May 2007 and a final decision was issued on 2 July 2008.

The SHRC recommended ex-gratia government relief of Rs. 1,50,000 and compassionate employment under SRO-43 [Statutory Rules and Orders].

Further, it was recommended that a case of kidnapping and murder be registered against the alleged perpetrators. Consequent to the SHRC recommendations, a first information report [FIR] no. 23/2009 u/s 302 [Murder], 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Poonch Police Station⁷⁹. Further information sought through RTI dated 14 November 2014.

By letter dated 24 March 2009, the Senior Superintendent of Police [SSP], Poonch, informed the Deputy Commissioner [DC], Poonch, that FIR no. 134/1999 u/s 2, 3 of the Egress and Internal Movement (Control) Ordinance, 2005 was registered against the victim at the Poonch Police Station⁸⁰. Further information sought through RTI dated 14 November 2014.

Further, a chargesheet was produced before the competent court u/s 512 [Record of evidence in absence of accused] Criminal Procedure Code, 1989 [CrPC] on 21 June 2002. It was also stated that Mohammad Syed Rathore was not involved in militancy related activities except for FIR no. 134/1999.

On 27 July 2009, the DC, Poonch, forwarded the case of the victim for ex-gratia government relief and compassionate employment under SRO-43, to the Financial Commissioner, Jammu and Kashmir Home Department. In this letter, the SHRC decision in the matter is dated as 4 January 2008, and the ex-gratia government relief amount is placed as Rs. 1,00,000, which is in contrast to the SHRC decision.

The document available for the purposes of analysis in the instant case is the SHRC decision of 2 July 2008. The SHRC begins with an excerpt from the report of the Director General of Police [DGP], Jammu and Kashmir and SSP, Poonch which is to the effect that the victim was kidnapped by the "Army personnel mentioned above" and that he was taken to their post for labour purposes but he has since never returned.

Further, that while the complainant referred to the incident as taking place on 7 and 8 November 1999, during investigations the date of occurrence of the incident was found to be 7 and 8 November 1998.

The SHRC decision then states that "the SSP, Poonch has admitted in his report that Captain Mohit and Subedar Balraj of 8 JAKLI were operating in the area and they had lifted" Mohammad Syed Rathore from his water mill during the night of 7 and 8 November 1998. Further, that Mohammad Syed Rathore then disappeared and that the custodial disappearance/killing was established against Captain Mohit and Subedar Balraj.

In the instant case, the SHRC decision, based on investigative reports, is a clear indictment of Captain Mohit and Subedar Balraj. But, the date of the incident remains uncertain. While the police place the occurrence in the year 1998, an FIR is reported by the police to have been filed against Mohammad Syed Rathore in 1999. It requires to be investigated whether Mohammad Syed Rathore disappeared in 1998 or 1999. Further, investigations would be required on the connection between the FIR filed against Mohammad Syed Rathore and his disappearance. It also needs to be investigated why the police did not file a FIR for the disappearance of Mohammad Syed Rathore by Captain Mohit and Subedar Balraj by their own volition, particularly as they had the opportunity to investigate Mohammad Syed Rathore in relation his movements under the repressive Egress and Internal Movement (Control) Ordinance, 2005 while preparing the chargesheet against him. At that point they would have met with the family of Mohammad Syed Rathore for investigations against him and would have learnt of his enforced disappearance. They should have then filed a FIR. The reasons for inaction by the police need to be explained.

Apparently from the date of the crime, to when a chargesheet was filed against Mohammad Syed Rathore, to the time when the police filed reports before the SHRC, and finally since the filing of FIR no. 23/2009 the police has failed to play a responsible role in investigations and prosecution. It is inexplicable that only after the SHRC recommendations, around 10 years after the crime, the police have filed a FIR, and since then the police has failed to produce any substantive investigations. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 58Victim Details

79 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided. Further information sought through RTI on 15 October 2013.

80 Information on this FIR was sought through RTI on 2 July 2012. No information was provided. Further information sought through RTI on 15 October 2013.

Mehraj-ud-Din [Enforced Disappearance]
 Son of: Karim-ud-Din
 Resident of: Malan, Pehlipora, Baramulla District

Alleged Perpetrators

1. Major D.K.Sharma, 29 Rashtriya Rifles [RR], Army

Case Information

Mehraj-ud-Din was picked up along with Mir Alam and Bashir Ahmad by Major D.K.Sharma on 20 August 1999. While the others were released, Mehraj-ud-Din has disappeared since.

First Information Report [FIR] no.73/1999 u/s 365 [Kidnapping / Abducting with intent to secretly and wrongfully confine] Ranbir Penal Code, 1989 [RPC] was filed at the Boniyar Police Station⁸¹. The communication dated 22 May 2012 from the Jammu and Kashmir Police states that the case was under investigation. A separate RTI was filed regarding all FIRs against the State forces in Jammu and Kashmir. By communication dated 25 December 2013 from the Jammu and Kashmir Police a copy of the FIR was provided and it was stated that the case was closed by declaring the perpetrators as untraced on 4 September 1999.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that the Government of Jammu and Kashmir was informed vide letter dated 15 December 2008 that no officer named Major D.K.Sharma was posted to the 29 RR during the relevant time. The victim here is referred to as Farooq Ahmed.

It is noteworthy that it took the Jammu and Kashmir Police, Government of Jammu and Kashmir and Ministry of Defence nine years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 59

Victim Details

Abdul Hamid Naik [Enforced Disappearance]
 Occupation: School Head Master
 Son of: Ghulam Mohammad Naik
 Resident of: Khari, Banihal, Doda District

Alleged Perpetrators

1. Subedar Kuldeep Singh, 20 Rashtriya Rifles [RR], Army, Kerewa
2. Naik [Corporal] Dinesh Singh Rana, 20 Rashtriya Rifles [RR], Army, Kerewa

Case Information

On the intervening night of 6 and 7 October 1999 at 11:00 pm, Abdul Hamid Naik was picked up and has disappeared since. The abduction of Abdul Hamid Naik was witnessed by his son and daughter: Mudassar Nazar and Parveen Akhtar.

Initially the Banihal Police Station refused to file a First Information Report [FIR], but it was subsequently filed as 164/1999 u/s 343 [Wrongful confinement for three or more days], 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] on 23 November 1999⁸². By communication dated 15 June 2012 from the Jammu and Kashmir Police information was provided that the case was still under investigation. By communication dated 20 November 2013 from the Jammu and Kashmir Police it was stated that the case was still under investigation. A copy of the FIR was provided.

Further, that the previous Station House Officer of the police station had conducted an identification parade of 15 army officials of the RR before the Magistrate. Abdul Hamid Naik's son on one of the identification parades was able to identify the alleged perpetrators.

The family of Abdul Hamid Naik filed a petition before the Jammu bench of the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 63/2000] for the release of the victim.

This petition was disposed off on 6 May 2000 based on the respondents submissions that Abdul Hamid Naik was not in their custody. Another petition was filed by the wife of Abdul Hamid Naik before the High Court [OWP 851/2000]⁸³.

It is noteworthy that despite the passage of 13 years the Jammu and Kashmir Police, after initially refusing to file the FIR, has yet to complete investigations.

The apathy of the Jammu and Kashmir Police has unfortunately been compounded by the manner in which the High Court disposed off a petition by the family of Abdul Hamid Naik based on a blanket denial by the respondents before it, which apparently helped the perpetrators in evading justice.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

⁸¹ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 22 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

⁸² Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. Further information sought through RTI on 15 October 2013.

⁸³ Information on the petition numbers was sought through RTI on 16 February 2012. No information was provided. Information on petition number 851/2000 was sought again on 4 April 2014. Information on OWP 63/2000 was again sought on 2 July 2012. By communication dated 27 June 2013, partial information was provided, included the final order in the case. The objections filed by the respondents before the High Court was not provided.

Case No. 60Victim Details

Habibullah Shah [Enforced Disappearance]
 Age: 35
 Occupation: Employee in Public Health and Engineering department
 Son of: Mohammad Ismail Shah [deceased]
 Spouse: Hanifa
 Resident of: Janbazpora, Baramulla District

Alleged Perpetrators

1. Captain Rahul, 29 Rashtriya Rifles [RR], Army, Camp Stadium, Baramulla

Case Information

On 28 January 2000 at 11:30 pm army personnel knocked at the door of Habibullah Shah. Prior to this, he had been beaten by army personnel. Habibullah Shah answered the door and informed the family that it was the army. Habibullah Shah was taken away and has disappeared since.

The family of Habibullah Shah searched for him until 2008/2009, and in this period received information of him being at various locations. A Border Security Forces [BSF] soldier, Babu Ram, used to tell the family that the victim was at the 29 RR Stadium Camp and that he would be released.

Habibullah Shah used to repair the pump of Captain Rahul. On one occasion the victim refused to go and Captain Rahul told him that he would tie him to a tyre and drag him there.

This previous tension leads the family of the victim to believe that Captain Rahul was behind the abduction and disappearance of the victim.

The family of the victim also states that there was a family/neighborhood feud against the victim due to his success. This may have also been behind the disappearance of Habibullah Shah.

The family of the victim gave a statement to the IPTK on 30 December 2011.

First Information Report [FIR] no. 19/2000 was filed at the Baramulla Police Station u/s 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC]⁸⁴. The FIR states that masked men in army uniform came and abducted the victim. By communication dated 22 April 2014 from Jammu and Kashmir Police a copy of certain investigation documents were provided. Further, it was stated that the final report was yet to be submitted.

The family of Habibullah Shah received ex-gratia government relief of Rs.1,00,000 in 2008 from the Deputy Commissioner, Baramulla. The family also applied for compassionate employment under SRO-43 [Statutory Rules and Orders] benefits which are yet to be received.

An enquiry report by the Additional District Magistrate, Baramulla considered a report received from the Senior Superintendent of Police [SSP], Baramulla that found that the abduction was carried out by unknown, masked gunmen wearing an army dress. Further, Habibullah Shah was found to have not been involved in any subversive activities. But, the final conclusion was that the perpetrators were "unknown militants" thereby disregarding the SSP's report relating to the gunmen wearing army dress.

In the instant case, it appears the family testimonial on the role of Captain Rahul was not considered by the enquiry officer or by the police investigations.

The report of the SSP even after confirming that the perpetrators were wearing army dress did not feel the need to inquire from Captain Rahul or other army personnel deployed in the area. Most pertinently, despite the passage of 14 years, no final report appears to have been prepared or submitted before a competent court.

Case No. 61Victim Details

Mohammad Yasin Bhat [Torture and Enforced Disappearance]
 Son of: Ghulam Mohammad Bhat, Sara Begum
 Resident of: Malik Sahab, Nowhatta, Srinagar

Alleged Perpetrators

1. Tanvir Jeelani, Sub-Divisional Police Officer [SDPO], Nowhatta Police Station, Jammu and Kashmir Police
2. Naik [Corporal] Tara Datt G/C, Army, Badami Bagh Cantonment Area
3. Lance Naik [Lance Corporal] Ghan Shyam, Army, Badami Bagh Cantonment Area
4. Cdo. Dalbir Singh, Army, Badami Bagh Cantonment Area
5. Sanjay Kumar, Army, Badami Bagh Cantonment Area
6. Lance Naik [Lance Corporal] Bikram Singh, Army, Badami Bagh Cantonment Area
7. B.B. Teing, Army, Badami Bagh Cantonment Area

Case Information

⁸⁴ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. By communication dated 30 November 2013 from Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI dated 14 November 2014. By communication dated 6 January 2015 information was provided that the final report was yet to be submitted.

On 2 March 2000 at around 8:00 pm, Mohammad Yasin Bhat was walking back along with his father after performing evening prayers from the mosque when some unknown uniformed men grabbed him and took him away.

Later that night, they came back at around 11:00 pm along with Mohammad Yasin Bhat to his residence. They locked the rest of the family into one room and all of the family members including women were slapped and beaten up. Meanwhile, during this time, they kept Mohammad Yasin Bhat in another room where he was tortured for around two hours after which they left with him.

The uniformed men consisted of a group of Government Gunmen [Ikhwan], army, personnel of the 63rd Battalion Border Security Force [BSF] along with SDPO Tanvir Geelani of the Nowhatta Police Station who was sitting in his vehicle during the entire time covering the other forces in the house of Mohammad Yasin Bhat. However, while the armed forces personnel were in the house of Mohammad Yasin Bhat, a slip of paper fell from the pocket of one of the men. Later on, the brother of Mohammad Yasin Bhat checked the slip of paper and it was actually a duty slip of the Badami Bagh Cantonment Area which consisted of names of the officers on duty and included the names and ranks of alleged perpetrators 2 to 7. Unfortunately, the slip of paper was taken away by SDPO Tanvir Geelani on the next day when the brother produced the slip in order to ascertain the identity of men who had abducted Mohammad Yasin Bhat. The family of Mohammad Yasin Bhat could not find him despite searching for him.

The family of Mohammad Yasin Bhat tried to file a FIR in the Nowhatta Police Station but they refused to lodge the same as they had mentioned SDPO Tanvir Geelani as one of the perpetrators. However, the officials at the Police Station lodged the FIR after six months and named uniformed unidentified gunmen as the perpetrators in place of the name of SDPO Tanvir Geelani.

The family of Mohammad Yasin Bhat gave statements to the IPTK on 29 November 2011 and 27 February 2012.

First Information Report [FIR] no.98/2000 u/s 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Nowhatta Police Station and states that unidentified gunmen abducted the victim.⁸⁵ By communication dated 30 November 2013 from the Jammu and Kashmir Police it was stated that the case was closed by declaring the perpetrators as untraced. By communication dated 22 April 2014 from the Jammu and Kashmir Police a police communication was

provided. By communication dated 23 January 2015 the closure report was provided.

The State Human Rights Commission [SHRC] was approached by the family of Mohammad Yasin Bhat. Inspector General of Police [IGP], Kashmir wrote a letter to the SHRC on 21 December 2000 that the army/BSF/CRPF headquarters denied the arrest of Mohammad Yasin Bhat. On 29 August 2002 the SHRC, stating that it had not received a response from the army's General Commanding Officer, 15 Corps, and as the matter pertains to the armed forces, stated that the matter be submitted to the National Human Rights Commission [NHRC].

Before the NHRC, the Ministry of Defence denied any arrest having been made. The family of Mohammad Yasin Bhat does not have any information on the final status of the case at the NHRC.

The Brigadier General Staff, 15 Corps, Headquarters, wrote a letter to the father of the victim on 18 May 2001 that Mohammad Yasin Bhat had never been arrested by them.

In around 2008 the IGP, Kashmir reopened the case and the Station House Officer [SHO] at the Nowhatta Police Station called the family to record their statement. The name of SDPO Tanvir Geelani was once again mentioned and the SHO refused to record the statement.

From refusing to file a correct FIR to delaying the investigations over 12 years, the Jammu and Kashmir Police appear to have assisted in a cover up to shield personnel of the police and the armed forces.

No information exists on the current status of investigations.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Finally, the IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir. No information was provided.

Thereby, it appears that complete impunity has been facilitated for the alleged perpetrators of the crime.

Case No. 62

Victim Details

⁸⁵ Information on this FIR was sought through RTI on 5 May 2012. By communication dated 2 June 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

Ghulam Qadir Sheikh [Enforced Disappearance]
 Son of: Subhan Sheikh [Late], Zeba
 Resident of: Gund, Shatipora [also referred to as
 Sonthipora], Kralpora, Kupwara District

Alleged Perpetrators

1. Major Agarwal, 14th Rajputana Rifles, Army, Camp Panzgam, Kupwara

Case Information

On 8 March 2000, Ghulam Qadir Sheikh was picked up by army personnel of the 14 Rajput Rifles and has disappeared since.

A missing report was entered in the Daily Diary vide no. 6 of the Kralpora Police Post on 30 March 2000.

Following inaction by the police, the inhabitants of the village moved an application before the Superintendent of Police [SP], Kupwara. The matter was taken up with the Commandant, 68th Mountain Brigade, Trehgam, and a reply was received wherein the armed forces were directed to cooperate with the police. The mother of Ghulam Qadir Sheikh also contacted the Commanding Officer, 14 Rajput Rifles on several occasions but was told that Ghulam Qadir Sheikh had not been arrested by the 14 Rajput Rifles.

First Information Report [FIR] no. 81/2000 u/s 346 [Wrongful confinement in secret] Ranbir Penal Code, 1989 [RPC] was filed at the Trehgam Police Station on 9 August 2000⁸⁶. The report that lists the contents of the FIR states that the victim was abducted by the 14 Rajput Rifles from his house on 8 March 2000. The mother of the victim filed the FIR. By communication dated 25 April 2014 from the Jammu and Kashmir Police a copy of the FIR and police communication were provided.

The family of Ghulam Qadir Sheikh filed a petition before the High Court of Jammu and Kashmir [HCP 251/2000] for his release and compensation of Rs. 10,00,000⁸⁷.

On 25 September 2001, the Station House Officer [SHO] of the concerned Police Station was asked to submit a status report. The report submitted indicted the 14 Rajput Rifles. But, the respondents contended that conclusions arrived at by the SHO were not acceptable to the Superintendent of Police [SP] Kupwara and therefore the matter was reinvestigated by the Deputy Superintendent of Police [DSP]. By communication dated 10 December 2014 from Jammu and Kashmir police information was provided that the reinvestigation had not led anywhere.

The reinvestigation suggested that the disappearance of the victim was at the hands of “masked gunmen”. On 10 October 2002 the High Court directed that the results of the investigations be placed before the Magistrate, and also directed an enquiry to be conducted that was carried out by the Principal Sessions Judge, Kupwara and concluded on 25 June 2007. As per the status report of SHO Trehgam, dated 15 April 2011, before the High Court, the case was closed by declaring the perpetrators as untraced on 6 January 2002. On 3 May 2011, the High Court disposed off the petition and ordered compensation of Rs.10,00,000.

The enquiry report of 25 June 2007 is the main document on record for the purposes of analysis.

The enquiry judge heard the evidence of the mother of the victim [the petitioner in the case] and four other persons, and the relevant evidence may be summarized as follows:

- Zeba, mother of Ghulam Qadir Sheikh, stated that “about seven years ago” the army personnel posted at Panzgam entered into her house and abducted Ghulam Qadir Sheikh. On the next day her house was raided by the army and Ghulam Qadir Sheikh was with the raiding party. No illegal arms or ammunitions were seized during the search. On the next day, the witness informed the Kralpora Police Post about the incident. The witness also approached the Panzgam army Camp and she learnt that the 14 Rajput Rifles were posted there. The witness was told that she could meet with Ghulam Qadir Sheikh at Payarpora, Kupwara District. The witness met the victim at Payarpora but has never seen the victim after that meeting and was not allowed to meet him again. The witness stated that Major Agarwal was the officer in whose custody her son was lying. Ghulam Qadir Sheikh was not involved in militancy. The witness was cross-examined by the Public Prosecutor and she stated that “it were the army personnel who told her that it was Major Agarwal who was posted in those days at Panzgam”.
- Azie, wife of Ghulam Qadir Sheikh, stated that while she, her husband and other family members were in her residence the army personnel came and abducted her husband. The witness was assured that Ghulam Qadir Sheikh would be released on the next day. On the next day a raid was conducted, Ghulam Qadir Sheikh was with the raiding party, but no illegal article was recovered. The witness stated that the “army personnel were from 14 Battalion of Rajput

86 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided. Further information sought through RTI on 15 October 2013. By communication dated 24 December 2013 a report that lists the contents of the FIR was provided. It appears that wrong sections of the RPC are listed on this report. Further information sought through RTI dated 14 November 2014.

87 Information on the petition number was sought through RTI on 2 July 2012. No information was provided. Information on this petition was sought again on 4 April 2014.

Regiment and the unit was being headed by one Major Agarwal". The mother of Ghulam Qadir Sheikh went to the Panzgam Camp and then subsequently met Ghulam Qadir Sheikh at Payarpora. The witness stated that the mother of Ghulam Qadir Sheikh saw him being handcuffed. Ghulam Qadir Sheikh was not involved in militancy. On cross-examination, the witness stated that "...the army did not allow her to meet her but after two days she met with her husband at Payarpora". The witness also stated that the abduction took place at about 8:00 pm in the evening.

- Rafiq, sister-in-law of Ghulam Qadir Sheikh, stated that Ghulam Qadir Sheikh was abducted by army personnel at about 8:00 pm in the evening. "The army personnel knocked the door and said that don't [be] afraid". Ghulam Qadir Sheikh was brought again the next morning for a search but no illegal items were recovered. The mother of Ghulam Qadir Sheikh met him at Payarpora. "He was taken from the bunker handcuffed". On cross-examination, the witness stated that about nine years ago she was married and residing in the same house. In those days, they were living in a joint family. Further, that "when they went to Payarpora for meeting the said Ghulam Qadir about 10/12 army personnel were there and some Major Agarwal was heading these Army men, who took her brother-in-law into the custody".
- Abdul Ahad Mir, son of the the village Chowkidar [Village guard] on the day of the abduction of Ghulam Qadir Sheikh and presently the Chowkidar of the village, confirms the abduction, but based on what he had heard about it. The witness stated that his father reported the abduction to the police.
- Mohammad Gulzar, the village headman of the area, stated that about eight years ago Ghulam Qadir Sheikh was abducted by Major Agarwal and on the next day Major Agarwal brought Ghulam Qadir Sheikh along to raid his house. The witness went to the camp to meet Ghulam Qadir Sheikh and was told that he was in the camp and would be released very soon. Ghulam Qadir Sheikh was not involved in militancy. On cross-examination, the witness stated that it was 8:00 pm "and was pitch dark and the identification was to some extent difficult". His house was at a little distance from that of Ghulam Qadir Sheikh. The witness was called by the army and then entered into the house of Ghulam Qadir Sheikh. The army personnel were in uniform without badges. On the following day when the search of Ghulam Qadir Sheikh's house was conducted Ghulam Qadir was kept in the vehicle and the witness "could not see him". The witness came to know about the name of the Major at "that time when the petitioner got the clue".

The enquiry report then states that J. S. Suraj, Colonel, Commanding Officer had submitted a

detailed investigation report wherein it had been stated that the petitioner was unclear about the unit involved in the abduction. The abduction was denied.

Based on the appraisal of the above, the enquiry judge stated that "it is emphatically clear" that Ghulam Qadir Sheikh was abducted by the 14 Rajput Rifles on "8th of March 2003". But, subsequently, the enquiry judge also states that "it is not clear by which unit he was picked up". Further, that "some armed personnel whether from army or from other security agency" were responsible.

A few comments may be made with regard to this case in light of the enquiry report:

- First, there exists some uncertainty about who met Ghulam Qadir Sheikh at Payarpora. It is unclear whether it was only the mother of Ghulam Qadir Sheikh that met him at Payarpora.
- Second, the identification of Major Agarwal as being responsible needs further clarification. While the witnesses do refer to him, the basis of their knowledge is unclear.
- Third, the ambivalence of the enquiry judge is unfortunate. On one hand the judge claims that the abduction by the 14 Rajput Rifles was "emphatically clear" but then later expresses doubt.
- Fourth, the role of the police and the High Court does seem unfortunate in this case. Following the status report before the High Court of the concerned Police Station indicting the 14 Rajput Rifles there appears to have been a cover-up and an attempt to shield the armed forces. The re-investigation ordered by the SP Kupwara fails to provide any basis for the change in the claim by the concerned SHO indicting the 14 Rajput Rifles. Considering that the evidence before the judicial enquiry does suggest a prima facie case against the 14 Rajput Rifles and Major Agarwal, the subsequent investigations and the closure of the case appears to be a cover-up. Further, the manner in which the High Court confines itself to the issue of compensation without considering the investigations and prosecutions in this case is unfortunate and allows for the Major Agarwal and the 14 Rajput Rifles to evade justice. This action of the High Court, after 11 years, is inadequate.
- Fifth, and finally, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 63

Victim Details

Mushtaq Ahmad Wani [Enforced Disappearance]
Age: 27
Son of: Mohammad Sultan Wani [deceased]
Resident of: Pethseer, Sopore, Baramulla District

Alleged Perpetrators

1. Major Jitender Bhakar⁸⁸, 29 Rashtriya Rifles [RR], Army, Camp Odoora, Sheeri, Baramulla, and headquartered at Uplana, Singhpora, Baramulla

Case Information

On 9 August 2000, Mushtaq Ahmad Wani was picked up from Tashkant chowk, Baramulla [before the High Court, the point of abduction is referred to as the "Baramulla chowk"], at some point in the afternoon. Eye-witnesses to the abduction informed the family of the victim that he had been abducted by the army. The army brought the victim subsequently to his house for a raid. The mother of the victim saw him at this point in army custody, specifically the 29 RR. Another person informed the family that on one occasion he had seen the victim in an army uniform. The victim informed him that he was being forced to work for the army. The family went to the 29 RR camp but were given false promises of his release but denied permission to meet with the victim. Mushtaq Ahmad Wani has disappeared since.

The family of the victim has reason to believe that the alleged perpetrator was responsible for the abduction and disappearance of Mushtaq Ahmad Wani because on 19 August 2000, the alleged perpetrator abducted the brother of the victim and told him that he could meet with the victim. Subsequently, he was tortured at the Odoora and Uplana Camps, and then released.

The family of Mushtaq Ahmad Wani petitioned various persons, including the President of India, but received no assistance. Further, a political worker of the Janata Dal party, Ghulam Mohammad Shah, took Rs. 40,000 from the family promising to assist them in the search for the victim. But, he subsequently provided no assistance.

The family of Mushtaq Ahmad Wani gave a statement to the IPTK on 15 December 2011.

First Information Report [FIR] no. 47/2001 u/s 346 [Wrongful confinement in secret] Ranbir Penal Code, 1989 [RPC] was filed at the Baramulla Police Station⁸⁹. The FIR was filed in April 2001. The alleged perpetrator is named as the person who abducted the victim. The FIR states that in the past as well, one or two times, the alleged perpetrator had similarly abducted the victim for interrogation.

The family of the victim filed a petition before the High Court of Jammu and Kashmir [habeas corpus

petition, Section 491 Criminal Procedure Code, 1989 (CrPC) 23/2000]⁹⁰ seeking the release of the victim. The 29 RR filed a counter affidavit before the High Court. The principal argument was that the F Company of the 29 RR [specifically named by the family of the victim in their petition] was deployed in Waddipura, Pattan and not in Baramulla. The 29 RR denied the arrest of the victim. The High Court on 25 September 2001, basing itself on the submission of the 29 RR, stated that the victim's family did not rebut the submission of the 29 RR and therefore there was no merit in the petition. The petition was dismissed.

On 21 July 2004, following a complaint by the family of the victim, the State Human Rights Commission [SHRC] indicted Major Jatindara and recommended ex-gratia government relief of Rs. 1,00,000.

Further, in addition to the above documents, there is on record a communication dated 3 January 2004 from the Inspector General of Police [IGP], Kashmir to the Station House Officers [SHO], Baramulla. This communication seeks the final report in the case, and provides as an attachment communication dated 16 December 2003 from Adjutant, 29 RR. The army communication, addressed to IGP, Kashmir, states that "...Major Jitender was on a long route patrol of 72 hours and left the unit location on 08 Aug 2000 and stayed for the night at village Trenaria (MT-2609). He was not present near Baramulla as he was leading a long route patrol from Odur to Dangarapura. On 09 Aug 2000 the patrol party reached village Ranglari (MT-2409) and stayed for the night in the same village (Situation report 0-2950 dated 08 Aug 2000 supporting move effective the officer is attached as appendix 'A' for your perusal). Numberdar of the village Seerjagir also denied any involvement of security forces in disappearance of Mushtaq Ahmad Wani S/O Mohammad Sultan Wani. Photocopy of certificate issued by Numberdar of village Seerjagir is attached and marked as appendix 'B' for perusal. Moreover, place of disappearance is not in the area of responsibility of 29 Rashtriya Rifles." Further, the communication states that the FIR was filed late and was to malign the image of the alleged perpetrator. The remainder of the first page of the letter is incomplete.

Also on file, and submitted through RTI response dated 6 January 2015, are a series of communications between the army and the police. The police seeks the attendance of the alleged perpetrator for questioning. The army states that he is not present, another person from the Battalion can make himself present and also writes to the Inspector General of Police, Kashmir [30

88 Variation of this name have been used in the documents. This version is as per the army communication of 16 December 2003.

89 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. By communication dated 30 November 2013 from Jammu and Kashmir Police a copy of the FIR was provided. By communication dated 22 April 2014 certain investigation related documents were provided. Further, it was stated that a final report had not been submitted so far. Further information sought through RTI dated 14 November 2014. By communication dated 6 January 2015 information was provided that the investigations were still ongoing.

90 Information on the petition number was sought through RTI on 16 February 2012. No information was provided.

January 2003] to intervene and close the case.

Before considering the conclusions of the SHRC, a preliminary comment may be made on the 25 September 2001 decision of the High Court. It is unfortunate that the Court did not order an enquiry and instead dismissed the petition based only on the submissions of the 29 RR. Further, the emphasis on the issue of the location of the camp would appear misplaced. The High Court should have considered that an armed force may in fact carry out activities beyond its jurisdiction, particularly when one considers that the allegation in question is one of an illegality.

The SHRC based its 21 July 2004 decision on the submissions of the family of the victim and a report submitted on 28 December 2001 by the IGP, Kashmir and a report submitted on 6 August 2003 by the Senior Superintendent of Police [SSP], Baramulla. The police reports confirmed the abduction of the victim by Major Jatindara on 9 August 2000 and his subsequent disappearance. The SHRC concluded that it was a “clear cut case of forcible disappearance”. The SHRC also considered the reference to the victims past militancy activities in the IGP, Kashmir report. The SHRC stated that “True, that in one of the reports the police says that the husband of the Complainant had attained the arms training. But there is nothing on the file to show that he has done any harm to anybody. On the other hand it is clear from the reports that after allegedly coming back from across the border he was apprehended and had remained in detention for about three years and that after his released he had not indulged in any illegal activity but had stuck to his domestic work when he was apprehended by Major Jatindara”. The SHRC continued by stating that “in this connection it may be stated that an allegation against a person that he has attained the illegal arms training is not sufficient by itself. If the husband of the Complainant had received any training, a case for that should have been lodged and the man should have been prosecuted...no reason for the arrest of the complainant's husband has been furnished by any agency.” The SHRC then recommended ex-gratia government relief and stated that “the Government shall take all the necessary and serious steps against Major Jatendara to its logical conclusion and that Major Jatindera is brought to justice.”

Therefore, despite the unwillingness of the High Court to implicate the 29 RR in the abduction and disappearance of the victim, both the police and the SHRC clearly indict the alleged perpetrator. Although the police investigations submitted to the SHRC confirm the abduction and disappearance of the victim by the alleged perpetrator, the subsequent recommendation for prosecution by the SHRC appears to have been disregarded. The callous

approach of the police and the High Court is concerning as it has amounted to continued impunity. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army. The army responses to the allegations are unconvincing. Firstly, no proof exists on their assertions that the alleged perpetrator was on a different route. Secondly, considering the short distances between the various places mentioned, the defence does not adequately rebut the allegations. Most importantly, rather than cooperate with the police, the army is inclined to ensure that the case is shut down.

Case No. 64

Victim Details

Ghulam Mohammad Mir [Enforced Disappearance]
Age: 27
Occupation: Taxi driver
Son of: Abdul Khaliq Mir
Resident of: Kalsari, Pattan, Baramulla district

Alleged Perpetrators

1. Captain Gurjeet Singh Sandal, 29 Rashtriya Rifles [RR], Army, Camp Chekseri, Nipora, Pattan, Baramulla District⁹¹

Case Information

On 14 October 2000 in a mine blast at Watipora, main road of Pattan, Captain Gurjeet Singh Sandal received minor injuries. After the blast, on 15 October 2000, several people were arrested, including the victim and Manzoor Ahmad Dar, who were travelling in the victim's taxi. The victim was arrested at around 1:20 pm by Captain Gurjeet Singh Sandal and two soldiers of 29 RR. After the arrest they were taken to the Yatipora Headquarters of the army, and the taxi was left outside the camp. The father of the victim went to the Yatipora Headquarters but there he was slapped by Captain Gurjeet Singh Sandal and thrown out of the camp.

Manzoor Ahmad Dar was released after some days. Manzoor Ahmad Dar told the family that he had seen the victim in the camp and his condition was bad. On returning to the camp, the father of the victim was given false promises of the release of his son. The victim has subsequently disappeared.

The father of the victim states that he sought help from various quarters, including the present Chief Minister of the State, Omar Abdullah, but he received no assistance.

⁹¹ Chekseri Camp is a tertiary camp associated with the Hyderbegh Camp [also referred to as Yatipora].

⁹² Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. By communication dated 30 November 2013 from Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI dated 14 November 2014.

Further, he was forced to sign a statement by the Chekseri Camp that the army had no role in the incident. Further, he states he spent an enormous amount in the search for his son and for seeking justice. The father received Rs. 1,00,000 as ex-gratia government relief after the recommendation of State Human Rights Commission [SHRC] but no compassionate employment under SRO-43 [Statutory Rules and Orders].

The family of Ghulam Mohammad Mir gave a statement to the IPTK on 12 December 2011.

First Information Report [FIR] no. 260/2000 u/s 346 [Wrongful confinement in secret] was filed at Pattan Police Station on 11 November 2000.⁹² The victim was a taxi driver and he was driving near the RR Hyderbeigh army camp on 15 October 2000 when the army people from Chekseri took him. The victim was told that he would be released the next day. By communication dated 22 April 2014 from the Jammu and Kashmir Police a copy of the FIR and closure report were provided. But, the police also stated that the “final report” is not available. By communication dated 6 January 2015 information was provided that the case was closed as untraced on 18 September 2006 but that the final report had not been prepared.

The family of the victim filed a petition before the High Court of Jammu and Kashmir [HCP 264/2002, a habeas corpus petition] seeking a judicial enquiry. The Defence Ministry, Union of India, and Captain Gurjeet Singh Sandal stated that the mine blast on 14 October 2000 took place on the Pattan Nihalpura road and not in Watipura. Further, no person of the unit was injured. The victim was not picked up. Finally, that Captain Gurjeet Singh Sandal was not “on the strength of the unit on 14 October”. He reported to the unit on 6 January 2001.

The petition was dismissed on 23 November 2004. The main reason, and arguably the only reason given [as the other arguments of the respondents are referred to but do not appear to have been the reason for the disposal], for disposing the petition was that the petitioners in their petition had stated on one occasion that “all the persons arrested were released within 25 days”. The High Court understood this to mean that the victim had also been released.

On 30 September 2004 the State Human Rights Commission [SHRC], approached by the family of the victim, issued its final decision implicating Captain Gurjeet Singh Sandal, and recommended ex-gratia government relief of Rs.1,00,000, compassionate employment under SRO-43 [Statutory Rules and Orders] and recommended that the investigation in the case be completed as soon as possible.

On inaction of the SHRC recommendations, another petition was filed before the High Court [Original Writ Petition (OWP) 265/2008] seeking that investigations in the case be completed, the SHRC recommendations be acted upon, further

compensation of Rs.15,00,000 be paid, that the graves in the State be investigated and DNA testing be done.

On 9 April 2008 the Court ordered that the recommendations of the SHRC be implemented and stated that on the issue of investigations the matter could be agitated before the concerned Chief Judicial Magistrate [CJM].

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Information was provided.

On 23 April 2010, the office of the District Magistrate, Baramulla, after enquiry, stated that the victim could be presumed to be dead.

As a preliminary point, there appears to be a contradiction in the position taken by Union of India and Captain Gurjeet Singh Sandal before the High Court in HCP 264/2002 that the alleged perpetrator was not at the alleged position during the time of the incident, and the position taken by the police authorities. A report dated 6 April 2001 by the Station House Officer [SHO] of Pattan Police Station implicates Captain Gurjeet Singh Sandal in the incident [referring to him as the “incharge camp 29 RR Cheekseri”]. Further, a report from the Senior Superintendent of Police [SSP], Baramulla dated 4 June 2001 to the SHRC also implicates the alleged perpetrator in the abduction of the victim.

The 30 September 2004 SHRC final decision was based on a police report. The police report stated that “during the course of investigation the witnesses have deposed that troops of 29 RR Camp Cheksari headed by Captain Gurjit Singh Sandal lifted said Ghulam Mohammad Mir son of Khaliq Mir resident of Kalsar Pattan.” The police also noted that no cooperation was received from the army in the investigations.

There is also a letter dated 4 June 2001 from the SSP, Baramulla to the SHRC on record. This letter also confirms that the victim was apprehended by troops under the command of the alleged perpetrator and that the taxi of the victim was found outside the “Hyderbagh” camp. The SHRC then heard further evidence from witnesses and concluded that the victim was abducted by Captain Gurjeet Singh Sandal, “Camp Hyderbeigh Yedipora Pattan” and that it could be presumed that he had been “liquidated while in custody”. The SHRC also stated that it was “disappointing to find that in this case also state police has failed to complete the investigation because of non-cooperation from the Army”.

A final point to be made is the unfortunate order of 23 November 2004 of the High Court. Any reading of the petition of the victim's family could lead a reader to only one conclusion: that the victim was never released. But, the High Court unfortunately focused on one line, completely out of context, and dismissed the petition.

Further, even assuming that the victim had been released, the High Court erred by not deeming it necessary to enquire into the legality of the detention of the victim.

Instead, the petition was dismissed with no enquiry. It was therefore only after the intervention of the SHRC that the High Court, around four years later, finally accepted that the victim was disappeared which was contrary to their earlier 23 November 2004 position.

This case serves as an unfortunate example where the police and SHRC have found in favour of the victim family, and against the perpetrator, but no justice, vis-à-vis prosecution of the alleged perpetrator, has taken place. It also appears that the case was finally closed by the police but the final report was not submitted before the court – and in fact had not even been prepared.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 65

Victim Details

Mohammad Ashraf Koka [Enforced Disappearance]
Age: 23/24
Occupation: Junior Assistant, Sub-Judge Court, Bijbehara
Son of: Ghulam Hassan Koka
Resident of: Kokagund, Verinag, Dooru, Islamabad District

Alleged Perpetrators

1. Commandant [presently Inspector General] Inder Singh Negi, 10th Battalion Indo-Tibetan Border Police [ITBP], Camp Verinag
2. 2nd In-Command [2 IC] R.S. Raina, 10th Battalion Indo-Tibetan Border Police [ITBP], Camp Verinag
3. Doctor P.S. Gunjiyal, Medical officer [also spelt on occasion as “P.S. Gungial”, “Ganjal”], 10th Battalion Indo Tibetan Border Police [ITBP], Camp Verinag
4. Inspector Rajinder Singh [also spelt on occasion as “Ragender Singh”], 10th Battalion Indo Tibetan Border Police [ITBP], Camp Verinag
5. Sub-Inspector [SI] Pratap Singh [reportedly dead], 10th Battalion Indo Tibetan Border Police [ITBP], Camp Verinag
6. Head Constable Hukum Singh, 10th Battalion Indo Tibetan Border Police [ITBP], Camp Verinag

7. Head Constable Ajit Kumar, 10th Battalion Indo Tibetan Border Police [ITBP], Camp Verinag
8. Sunil Joshi [INT Wing], 10th Battalion Indo Tibetan Border Police [ITBP], Camp Verinag
9. Sub-inspector [SI] R.S. Chauhan [also spelt on occasion as “R.S.Chowan”], 10th Battalion Indo Tibetan Border Police [ITBP], Camp Verinag
10. Sub-Inspector [SI] Mishra, 10th Battalion Indo Tibetan Border Police [ITBP], Camp Verinag
11. Sub-Inspector [SI] Ram Pratap, 10th Battalion Indo Tibetan Border Police [ITBP], Camp Verinag

Case Information

On 27 October 2001, Mohammad Ashraf Koka was picked up from his residence at around 7:30 pm and subsequently disappeared. The family of Mohammad Ashraf Koka states that he was picked up by personnel of the 10th Battalion Indo Tibetan Border Police [ITBP], Verinag Camp. The father of the victim recognised R.S.Raina, Doctor P.S. Gunjiyal, SI Pratap Singh, Head Constable Hukum Singh, Head Constable Ajit Kumar, Sunil Joshi, JCO R.S.Chauhan, JCO Mishra and SI Ram Pratap on this occasion. [The father of the victim remembers the ranks as “JCO” which do not exist in the ITBP. The equivalent rank is Sub-inspector].

A First Information Report [FIR] no. 96/2001 u/s 302, 364 RPC and 7/25 Arms Act was filed at the Dooru Police Station on 3 November 2001 on the orders of the Chief Judicial Magistrate [CJM], Anantnag. According to the family of the victim the Station House Officer [SHO], Dooru Police Station, Abdul Majeed refused to file the FIR⁹³. By communication dated 16 May 2014 from the Jammu and Kashmir Police it was stated that the case under investigation and was being monitored by the High Court of Srinagar and that it was came under Section 6(b) of the Jammu and Kashmir Right to Information [RTI], Act, 2009.

The family of Mohammad Ashraf Koka filed a petition in the High Court of Jammu and Kashmir [habeas corpus petition, Section 491 Criminal Procedure Code, 1989 (CrPC) petition no.6/2002] for the police to take action. The ITBP denied that Mohammad Ashraf Koka was in their custody. The High Court ordered an enquiry to be conducted by the District and Sessions Judge, Anantnag on 16 September 2003. By an order dated 21 December 2004 a direction was given to investigate the occurrence, and the petition was disposed off despite not having received the report of the District and Sessions Judge, Anantnag. The report of the District and Sessions Judge, Anantnag is dated 21 October 2004 and

93 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. By communication dated 16 November 2013 from the Jammu and Kashmir Police a copy of the FIR was provided.

recommended that full investigation be carried out in the case.

The family of Mohammad Ashraf Koka filed a contempt petition [2/2005] against the inaction of the police in completing investigations, following which the High Court issued another order on 14 November 2005 that investigations be completed. Due to inaction a second contempt petition [1/2006] was then filed and the High Court then issued orders on 16 October 2007 to the CJM, Anantnag to follow the provisions of the CrPC when the charge sheet would be filed before it. This order of the court was made following a report submitted by the police authorities before it indicting eleven personnel of the ITBP. Also of note, is an order passed by the High Court on 23 May 2007 that states that SI Pratap Singh is reportedly dead. The family of the victim approached the High Court again due to the non-progress of the case and the matter remains pending before the High Court.

The State Human Rights Commission [SHRC] was also seized of the matter and issued a decision on 22 May 2003 and confirmed the custodial disappearance of the victim and recommended ex-gratia government relief of Rs. 2,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders].

On 28 July 2009, after receiving only Rs. 1,00,000, the father of Mohammad Ashraf Koka approached the SHRC. But, on being informed that as per the rules only Rs. 1,00,000 were payable, the father of Mohammad Ashraf Koka did not pursue the matter further. The final decision dismissing the matter was made on 20 August 2009. The brother of Mohammad Ashraf Koka has received compassionate employment under SRO-43.

Inder Singh Negi, one of the alleged perpetrators in the case, filed a petition under Section 561-A [89/2007] before the High Court to quash the FIR filed. But, on 18 May 2009 the petition was dismissed due to the continued absence of the petitioner.

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Information was provided.

While the matter remains pending before the High Court, Inder Singh Negi has got a stay on test identification parade from the Supreme Court [SLP 4653/2014]. Therefore, the investigations remain pending though the father of the victim has argued before the Supreme Court as well that there is no necessity of a identification parade in this case and the evidence on record would justify the filing of a chargesheet.

The documents on record that may be used for purposes of analysis are the SHRC decision of 22 May 2003, enquiry report of the District and Sessions Judge, Anantnag of 21 October 2004 and the following submissions made by police authorities:

- A status report of the SHO of Dooru Police Station [date not ascertainable] filed before the High Court confirms that based on witnesses and incriminating material, a “prima facie case has been established against” all the eleven alleged perpetrators listed above, but that Sub-inspector Pratap Singh is dead. **Further, it is stated that further identification parade would not be necessary.**
- A letter from the Senior Superintendent of Police [SSP], Anantnag dated 31 December 2007 to the Deputy Commissioner, Anantnag, states that Mohammad Ashraf Koka was not involved in subversive activities and no adverse records existed against him. What is also of interest is that this letter states that the investigations in the case had been concluded as challan against 11 accused personnel of the ITBP. This appears quite in contrast to the delay that is being witnessed by the family of Mohammad Ashraf Koka by the police authorities in concluding the case and actually filing a charge sheet before a court.

The SHRC decision of 22 May 2003 may now be considered. The SHRC based its decision on reports by the Deputy Commissioner, Anantnag and Inspector General of Police [IGP], Kashmir who both based their reports on the testimony of Manzoor Ahmad Wani who had accompanied the party that picked up Mohammad Ashraf Koka. Manzoor Ahmad Wani stated that Mohammad Ashraf Koka was “kidnapped by a group of 50 to 100 uniformed persons whose faces were covered and the man who appeared to be their boss was speaking plain Urdu”. Based on essentially this testimony, the SHRC concluded that the victim “is missing for the last about two years due to militancy related circumstances” and recommended ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders]. The SHRC did not indict the personnel of the ITBP. The SHRC decision therefore confirms the abduction of the victim, but clearly errs by referring to “militancy related circumstances” – a conclusion that is unfounded. On 9 June 2004 the father of Mohammad Ashraf Koka again approached the SHRC seeking that its earlier decision be enforced and that the ITBP be indicted. The SHRC, by its decision of 22 July 2004, forwarded its recommendations on compensation to the government once again, and on the issue of the role of the ITBP left the matter to the High Court which was seized of the writ petition. The final point to be made with regard to the SHRC would be the order of the Deputy Commissioner, Anantnag of 12 February 2009 which despite the SHRC recommendations, only granted ex-gratia government relief of Rs. 1,00,000.

The enquiry report of the District and Sessions Judge, Anantnag may now be considered. As a preliminary point, it must be noted that the report is dated 21 October 2004, but the High Court in its order of 21 December 2004 appears not to have received the

report. The enquiry heard numerous witnesses and the relevant evidence is considered below:

- Ghulam Hassan Koka, the father of Mohammad Ashraf Koka, testified that prior to the incident, personnel of the ITBP, particularly “Sunil Joshi, R.S. Chauhan, R.S. Raina, Shera and Dr. Ganjal”, met with the witness and made enquiries about his son. In the month of August 1999 an officer from the 24th Battalion ITBP Camp Verinag came to the house of the witness and asked for the attendance of Mohammad Ashraf Koka. The witness then says “same was obtained but was not accepted by ITBP officer”. Then in the month of July 2001 officials of the 10th Battalion ITBP Camp Verinag came to the house of the witness and asked him to meet the Commanding Officer of the 10th Battalion ITBP. The witness was not allowed to enter the camp but subsequently met with Sunil Joshi, R. S. Chauhan, R.S. Raina, Shera and Dr. Ganjal, who asked him to produce his son “Imtiyaz Ahmed”, but the witness stated that this person was not his son. On 27 October 2001, the witness stated that the ITBP arrested Mohammad Ashraf Koka from his residence. The witness names specific officers: “Sunil Joshi, R. S. Chauhan, R.S. Raina” and “Dr. Ganjal”. The witness also testified that “Dr. Ganjal... tried to open fire on his (witness's) wife and did fire a shot in the air...” On 28 October 2001, the witness testified that he submitted a written report at the Dooru Police Station regarding the incident. The witness also speaks of meeting with a Rajinder Singh, Deputy Commander of the ITBP at the “Deputy Commissioner's office” on 11 January 2002, along with an Abdul Majid, a judicial clerk, where he was informed that the victim had been picked up by the BSF. The witness evidence was not damaged on cross-examination.
- Mohammad Hussain Koka, the brother of Mohammad Ashraf Koka also testified. The witness testified that in August 1999 at about 10:30 pm, personnel of the ITBP Camp Verinag came to his residence and enquired after Mohammad Ashraf Koka and asked for his attendance certificate. This was done. Then, on 9 July 2001 ITBP personnel again came to his house and asked for his brother “Imtiyaz”. The witness informed them that Imtiyaz was not his brother but that Mohammad Ashraf Koka was his brother. The ITBP personnel asked for the victim to be presented in the camp by the evening. As Mohammad Ashraf Koka was at that point in Srinagar, he could only go to the camp two days later. On the incident of 27 October 2001, the witness testified to the presence of “150 police personnel”. On cross-examination, the witness testified to “four persons” entering the house along with his father. One of them was a person named “Manzoor Ahmad Wani”. Manzoor Ahmad Wani informed them that the persons he was accompanying were from the ITBP. The witness testified that he too could identify that they were from the ITBP based on their name and shoulder plates. Manzoor Ahmad Wani had been picked up by them to help them identify the witness's house. The witness also testified to the presence of “Sunil Joshi, some R. S. Raina and S. Chouhan” from the 10th Battalion of the ITBP. The witness testified that he knew them as they used to come to his house earlier.
- Witnesses Ghulam Hassan Bhat, Ghulam Rasool, Ali Mohammad Ganie, Abdul Aziz Koka, Ghulam Ahmed Koka and Mohammad Sultan Koka testified to the events of 27 October 2001 and confirmed that at around 7:30 pm, the victim was taken by the ITBP.
- Witness Ghulam Nabi Sheikh testified to the events of July 2001 when the father of the victim went to the camp of the ITBP. The witness also testified that in October 2001, the mother of “Manzoor Ahmad” told him that her son had been taken by the security people to identify the house of Mohammad Ashraf Koka. It was through this that he became aware that the ITBP picked up the victim.
- Witness Reyaz Ahmad Koka, the younger brother of Mohammad Ashraf Koka, testified that on 27 October 2001 personnel from the Verinag Camp came to their house. Five people entered the house, one of whom was “Sunil Joshi”. Mohammad Ashraf Koka was then taken by them. The witness also testified that on the following day when the family went to the Verinag Camp they were not allowed inside but one of the ITBP soldiers informed them that Mohammad Ashraf Koka was indeed inside the camp. On cross-examination the witness places the incident on 22 October 2001. Witness Tasleema Akhter, sister of Mohammad Ashraf Koka, testified almost exactly as Reyaz Ahmad Koka did in his examination-in-chief, including by naming “Sunil Joshi”.
- Constable Ajit Kumar testified and provided very little by way of testimony. Hukum Singh confirmed that in the year 2001 he was posted at Camp Verinag. The witness then denied the events of 27 October 2001. The witness also confirmed that Sub-Inspector Ram Pratap was posted at camp Verinag in 2001. The witness then stated that he “does not know whether in the year 2001 any security person namely R. S. Chauhan, R.S. Raina, Sunil Joshi, Mishra were posted there or not”. Head Constable Nand Singh, posted at ITBP, Camp Verinag, denied any crackdown or arrest in October 2001. But, he

confirmed that in October 2001 Inder Singh was the commanding officer. But, he stated that he did not know “R. S. Chauhan or any Mishra or any Sunil Joshi”. But, he stated that he knew “second commandant R. S. Raina”.

The testimony of Ghulam Hassan Koka, undamaged on cross-examination, appears strong and reliable. The only question may be on the meeting with “Rajinder Singh” that he places on 11 January 2002 at the Deputy Commissioner's office. Before the SHRC, the witness stated that he met the same person on 12 January 2002 and was informed that his son was in the custody of the 54th Battalion of the BSF and was arrested by them. Further, he states that Rajinder Singh was “Dy.SP ITBP camped at Sangam bridge”. There are discrepancies: the rank of the officer, and the date of the incident.

Further, it is unclear whether this is the same person who is also considered one of the alleged perpetrators [Inspector Rajinder Singh, ITBP, Camp Verinag]. But, these discrepancies would not affect the credibility of the witness testimony. The testimony of Mohammad Hussain Koka appears to match the testimony of his father closely, both on the earlier incidents and the events of 27 October 2001. Though, Mohammad Hussain Koka initially refers to police uniforms, on cross-examination he not only refers to the ITBP but also names specific officers that match with his father's testimony. While the testimony of witnesses Ghulam Hassan Bhat, Ghulam Rasool, Ali Mohammad Ganie, Abdul Aziz Koka, Ghulam Ahmed Koka and Mohammad Sultan Koka are partly hearsay, they are consistent and serve to corroborate the testimony of the father and brother of Mohammad Ashraf Koka. Reyaz Ahmad Koka and Tasleema Akhter further corroborate the existing evidence, though in cross-examination Reyaz Ahmad Koka places the incident on 22 October 2001. This by itself may not take away from the credibility of the witness [as the exact date may not always be easy to remember] but it may equally be a typographical error in the enquiry report and it would be appropriate to check the original transcript of the witness.

Ghulam Nabi Sheikh's testimony on the events prior to 27 October 2001, particularly the incident in July 2001 when they went to the ITBP camp appears to corroborate the testimony of Ghulam Hassan Koka and Mohammad Hussain Koka. It must be said that this evidence is not properly fleshed out by any of the witnesses, but it does appear consistent through their testimonies. His testimony on Manzoor Ahmad further corroborates the already existing testimony on the events of 27 October 2001 and further supports the theory that Manzoor Ahmad Wani was forced to point out the house of the victim to the ITBP.

The enquiry report proceeded to then draw its own conclusions from the witness testimony and confirmed the abduction of Mohammad Ashraf Koka on 27 October 2001 and stated that “no fault on the part of Mohammad Ashraf has come on record which could

be said to be a cause for his disappearance or a case for his non-return”. But, the enquiry report found contradictions when it came to the role of ITBP in this abduction. The enquiry report found that in the written report filed before the police station on 28 October 2001 and in the application before the CJM, Anantnag, Ghulam Hassan Koka did not specifically name the ITBP. But, despite the other witnesses who have testified to the role of the ITBP, and despite the enquiry recognizing the statement of Ghulam Hassan Koka that “it is the SHO who asked him to bring an application mentioning therein that unidentified persons lifted his son”, the enquiry report refused to indict the ITBP. The enquiry report when reaching this conclusion also relied on the witnesses produced by the ITBP. The conclusion of the enquiry report, in light of the extensive testimony that suggests the role of the ITBP, is unfortunate.

In conclusion, considering the existing police reports, SHRC judgment and enquiry report on record, in the words of the SHO of the Dooru Police Station [date not ascertainable] filed before the High Court, a “prima facie case has been established against” all the eleven alleged perpetrators listed above. It is therefore particularly unfortunate that the case remains pending in the High Court and Supreme Court with no action being taken by the authorities in question.

The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Finally, the manner in which the government chooses to keep information closed is brought by this case as the police seeks to keep information secret by invoking the RTI Act when this case is heard in public before the High Court.

Case No. 66

Victim Details

Manzoor Ahmad Wani [Enforced Disappearance]
Son of: Bhakti, Abdul Rahim Wani [deceased]
Spouse: Jabeena Begum
Resident of: Tragpora, Baramulla District

Alleged Perpetrators

1. Major S. Bhattacharya, Company Commander, 28 Rashtriya Rifles [RR], Tragpora camp, Army
2. Abdul Qayoom Tantray, Government Gunman [Ikhwan]
3. Ghulam Ahmad Malik [also known as Jehangir], Government Gunman [Ikhwan]
4. Gulzar Ahmad Bhat, Government Gunman [Ikhwan]
5. Aijaz Ahmad, Government Gunman [Ikhwan]

Case Information

On 22 December 2001, Manzoor Ahmad was picked up from Tragpora, Baramulla District, by Major Bhattacharya and has disappeared since. The 28 RR denied the abduction of Manzoor Ahmad. The victims, Bakhti, who was present on the spot pleaded with the renegades [four listed above] and Major Bhattacharya not to harm his son. For the coming weeks Bhakti went to the army camp looking for the victim but she was threatened by Major Bhattacharya and the renegades if she continued enquiring on the whereabouts of her son or if she filed any complaint regarding the case.

A week before his arrest, the victim was married to Jabeena, whose cousin Gulzar Ahmad was a renegade and one among the perpetrators involved in this case. The day Manzoor was arrested, Jabeena went back to her maternal home and did not return. She later married renegade Gulzar's cousin. Manzoor's family was offered compensation by the government which her mother completely refused.

The family of the victim gave a statement to the IPTK on 5 November 2014

A petition was filed before the High Court of Jammu and Kashmir [HCP 56/2006]. As the respondents to the petition did not make any submissions, on 8 August 2006 a judicial enquiry was ordered by the High Court. The Principal District Judge, Baramulla was appointed as the enquiry officer⁹⁴.

Also on record are documents that suggest a First Information Report [FIR] was filed and there may be an ongoing trial against the civilians named above. By communication dated 4 May 2007, Additional Deputy Commissioner, Baramulla sought information on this case [while referring to an earlier communication on the same matter dated 11 April 2007] from the Senior Superintendent of Police [SSP], Baramulla. It appears this communication was made in relation to the relief and compensation issues before the district administration. This communication was responded to by Superintendent of Police [SP] [Human Rights] by communication dated 7 August 2009. This

communication states that field verification revealed that the victim was detained by Major S. Bhattacharya accompanied by alleged perpetrators 2 and 3. The victim was kidnapped and then murdered by alleged perpetrators 1, 2 and 3. The body was disposed off and could not be found. A chargesheet in this regard has been produced before a court on 8 September 2006. The sections noted in the chargesheet are: 364, 302, 201, 348, 109 RPC and 7/27 Arms Act. An incomplete copy of communication dated 8 June 2009 to Deputy Commissioner, Baramulla is also on record. The communication is from District Police Office, Baramulla [the sender cannot be identified as the copy of the document is incomplete and is missing the second page]. This communication states that communication dated 4 February 2009 from Additional Superintendent of Police [ASP] Sopore recounted the allegations of the mother of the victim regarding the involvement of alleged perpetrators 1, 2 and 3. Full personal details of alleged perpetrators 2 and 3 are provided as follows: Abdul Qayoom Tantray, son of Sattar Tantray, resident of Rohama, and Ghulam Ahmad Malik, resident of Buddan and attached with the 28 RR camp at Tragpora. The victim was detained on way from Handwara to Baramulla in a private bus and has since disappeared. FIR no. 126/2002 u/s 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Sopore Police Station⁹⁵. During the course of investigation, Abdul Qayoom Tantray was arrested by the Sopore police on 17 July 2006. Gulzar Ahmad Bhat, son of Mohammad Sultan Bhat, resident of Rohama “also surfaced” and was arrested on 26 July 2006, and is presently [as of the date of the communication] out on bail. Examination of these persons and other independent witnesses revealed that the victim was travelling on a private bus on 22 December 2001 from Handwara to Baramulla. Alleged perpetrators 1, 2 and 3 took him off the bus and to the Tragpora camp. At the camp he was interrogated and asked about a pistol which they suspected was in his possession. He plead his ignorance. The final document on record is communication dated 15 April 2013 from Sub-divisional police officer [SDPO] to the Sub-divisional Magistrate, Sopore. This communication confirms that neither the victim nor his wife are/were involved in subversive activities. This communication appears to deal with the issue of relief vis-à-vis the wife of the victim.

Also on record is an application from the wife of the victim to the Deputy Commissioner, Baramulla seeking share of relief as ordered by the State Human Rights Commission [SHRC] towards the wife of the victim. This application also annexes communication dated 7 August 2009 from SP [Human Rights], for Additional Director General of

⁹⁴ Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided. Information on this petition was sought again on 4 April 2014.

⁹⁵ Further information sought through RTI dated 14 November 2014. By communication dated 5 January 2015 from the Jammu and Kashmir Police a copy of the FIR and chargesheet were provided. It was stated that the case remained under investigation but had been “partially challaned”.

Police, CID, to Deputy Commissioner, Baramulla which states that the victim was abducted by alleged perpetrators 1, 2 and 3 and that there was no adverse report against the victim.

It appears that prosecution may be ongoing against the civilians involved in this case. Further, the status of the High Court petition filed needs to be ascertained. Further, the army appears to care very little for the possibility that one of its personnel may be involved in the commission of a crime as the available documents do not suggest that even a Court-Martial was conducted in this case by the army against Major S. Bhattacharya.

Case No. 67

Victim Details

Manzoor Ahmad Dar [Enforced Disappearance]
Occupation: Chemist
Age: 37
Son of: Ali Mohammad Dar
Spouse: Jana
Resident of: Rawalpora, Srinagar

Alleged Perpetrators

1. Major Kishore Malhotra, 35 Rashtriya Rifles [RR], Army

Case Information

On 16 January 2002, the house of the victim was raided by personnel of the RR. No incriminating material was found.

During the intervening night of 18 and 19 January 2002, at about 12:30 am, personnel of the 35 RR, led by Major Kishore Malhotra, arrested Manzoor Ahmad Dar from his residence and detained him at the JAKLI Regimental Centre, Haftchinar, Srinagar.

The family of Manzoor Ahmad Dar visited this location regularly but they were not allowed to meet him. Manzoor Ahmad Dar has disappeared since.

First Information Report [FIR] no. 33/2002 u/s 363 [Kidnapping], 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Sadder Police Station on 1 February 2002⁹⁶. By communication dated 30 November 2013 from the Jammu and Kashmir Police it was stated that the case was still under investigation. By communication dated 22 April 2014 from the Jammu and Kashmir Police information was provided that the case was under investigation for Test Identification Parade. Further, a copy of the FIR was provided. But, a notation on the FIR reads as "Against Untraced

31/12/2012".

A petition was filed before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 288/2002] for the production of the victim and investigations on the FIR. A judicial inquiry was conducted by Chief Judicial Magistrate [CJM], Budgam based on the High Court order of 17 March 2003, and indicted the RR forces on 10 October 2003. The Union of India and RR made submissions before the High Court. The incident was completely denied. The final order in the case was given by the High Court on 24 July 2004 and the Station House Officer [SHO] was ordered to expedite the investigations.

A contempt petition [no. 53/2005] was filed before the High Court against the non-implementation of the High Court order. The police claimed that the investigations could not be concluded as the Commanding Officer, 145th Battalion, BSF was not cooperating with the investigations. On 16 April 2007, the High Court while addressing the matter stated that "it is not clear for what purpose communications are being addressed to them when there is a clear finding from the Chief Judicial Magistrate, Budgam, that missing person was lifted by Rashtriya Rifles personnel". The SHO, Police Station Sadder was given two months to complete the investigations. A direction was sent to the Director General of Police [DGP], Jammu and Kashmir to immediately approach the army authorities to get an identification parade done.

On 23 July 2007, the High Court was informed by the investigating officer in the case that Colonel Kishore Malhotra, c/o 7th Assam Regiment, was not cooperating with the investigations. The High Court ordered that he present himself before the investigating officer within 15 days.

On 6 September 2007 the Union of India submitted before the High Court that a questionnaire had been sent to Colonel Kishore Malhotra, but if the investigating officer required his physical presence, the Union of India had no objection. The Investigating officer stated that the presence of Colonel Kishore Malhotra was required. The High Court ordered that Colonel Kishore Malhotra was to be produced before the investigating officer within two weeks.

On 11 October 2007, on being informed that a communication had been sent to the Brigade Commander, 12 Sector RR with no result, the High Court directed that a direct communication be sent to Colonel Kishore Malhotra to appear before the investigating officer on 15 November 2007 failing which coercive measures would be taken.

On 21 November 2007, the High Court set the date of 10 December 2007 for the appearance of Colonel Kishore Malhotra before the investigating officer.

⁹⁶ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013.

On 12 December 2007 the investigating officer informed the court that Colonel Kishore Malhotra had not appeared before him. The High Court, while terming it a “gross violation of the directions of the Court” ordered that the General Officer Commanding, 15 Corps, Badami Bagh Cantonment, Srinagar be directed to ask Colonel Kishore Malhotra to appear before the investigating officer within two weeks.

On 19 February 2008, based on the submissions of the Union of India, the High Court ordered that a communication be sent through the General Officer Commanding [GOC], Northern Command to Colonel Kishore Malhotra.

On 7 April 2008, the Union of India stated that there was no information from the GOC, Northern Command. The High Court ordered a *dasti* [by hand] notice on Colonel Kishore Malhotra.

On 13 May 2008 the High Court was informed that a Sub-Inspector travelled to Drass, which was the available address of Colonel Kishore Malhotra, but the officer in charge refused to disclose the actual location of Colonel Kishore Malhotra. The High Court directed that the GOC, Northern Command, Udhampur, inform the High Court within two weeks the present posting of Colonel Kishore Malhotra.

On 5 June 2008, the High Court was informed by Union of India that Colonel Kishore Malhotra would be available at Brigade Headquarters, Drass on 16 June 2008 to meet the investigating officer. Further, the High Court was informed that a Special Investigation Team had been appointed in the matter.

On 10 July 2008, the High Court was informed that Colonel Kishore Malhotra did not appear before the investigating officer. The High Court ordered that Colonel Kishore Malhotra appear before the Senior Superintendent of Police [SSP], Srinagar, the Chief Investigating Officer, within three weeks. On 2 September 2008, this order was challenged [Interim Application no.1308/2008] but dismissed by the High Court and the 10 July 2008 order was maintained. The Union of India appealed against this order, and the 10 July 2008 order, before the Supreme Court, but the SLP was dismissed on 24 August 2009.

On 1 December 2009 the High Court was informed that Colonel Kishore Malhotra had appeared before the SSP, Srinagar. The High Court ordered that an affidavit be filed showing compliance.

On 16 April 2010, the High Court, after receiving the Compliance report, ordered that on the next date of hearing the status of the case be provided.

On 28 May 2010, the High Court observed that while Colonel Kishore Malhotra met the investigating officer, he was given a questionnaire to which he responded. Therefore there was no verbal

interrogation. In response, Colonel Kishore Malhotra stated that at the relevant time he was posted at Old Airport, Srinagar. Rawalpura, from where the victim was abducted, was an area under his responsibility. Other armed forces, such as the Border Security Force [BSF], Central Reserve Police Force [CRPF] and Special Operations Group [SOG] of Jammu and Kashmir Police were also operating in the area. Colonel Kishore Malhotra denied that he had ever raided the house of the victim. He denied that he had abducted the victim. Colonel Kishore Malhotra stated that as a responsible Commander he had met the family of the victim and tried to assist them. He denied that he had ever told them not to approach the media. The High Court expressed dissatisfaction with the investigation and ordered that the Inspector General of Police [IGP], Kashmir Range, monitor the investigations and that the investigations be completed within two months.

On 28 December 2010, five weeks time was sought for completion of the investigations by the Special Investigation Team. This was granted.

On 22 March 2011, the investigating officer sought more time to procure the presence of Colonel Kishore Malhotra, reportedly posted at Chandni-Mandir, Kolkota. Time of three weeks was given.

On 19 April 2011, the High Court ordered the investigating officer to file an affidavit with the present posting of Colonel Kishore Malhotra, so that the High Court could issue directions for procuring his presence before the investigating officer.

On 3 May 2011, the High Court, on receiving information on the present posting of Colonel Kishore Malhotra, gave the investigating officer two weeks time to ensure the presence of Colonel Kishore Malhotra.

On 9 August 2011, on being requested, an extension of three months time for completion of investigations was granted.

On 8 December 2011, time was sought for filing a compliance report.

On 21 February 2012, the High Court ordered the personal appearance of the investigating officer to explain his inability in completing investigations.

On 23 February 2012, the investigating officer appeared before the court and stated that the inability to conclude investigations was due to being unable to procure the presence of Colonel Kishore Malhotra. The High Court stated that the investigating officer instead of using the powers under the Code of Criminal Procedure, was addressing request letters to Colonel Kishore Malhotra and others. The investigating officer undertook to secure the presence of Colonel Kishore Malhotra within ten days, and present a chargesheet five days after that.

On 10 October 2012, the High Court ordered the Inspector General of Police [IGP], Kashmir, to file a personal affidavit in the matter on or before 6 November 2012 and clarify how long it would take to complete investigations. Previously, the police had sought to execute an arrest warrant against the alleged perpetrator in Pune but were unable to locate him.⁹⁷

The High Court petition remains pending. Recently, another status report was filed by the police stating that efforts were still on to trace the alleged perpetrator.

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Information was provided.

Also on record is a letter dated 24 July 2010 from the IGP, Kashmir Zone, Srinagar, to the SSP, Srinagar, that states that the disappearance of the victim is confirmed, the BSF has issued a certificate stating that the victim was of good character, the case was closed as untraced on 22 October 2003, a Special Investigation Team was constituted on 20 April 2007, and that proper investigations need to be carried out as per the High Court directions.

The statements of the family of the victim, the conduct of the army and alleged perpetrator, and the direction of the police investigations suggest the role of the alleged perpetrator in the crime.

The police investigations in this case have been weak and ineffective right from the start. This apparently continues to date with investigation still pending for identification parade, and a contradiction on the FIR where it is suggested that the case may have been closed as untraced in December 2012.

From wasting time with approaching the BSF, to not using the coercive powers under the Criminal Procedure Code, 1989 (CrPC) for interrogating the alleged perpetrator, the investigations have only helped the alleged perpetrator to evade the processes of justice. The farce of interrogating the alleged perpetrator is evidence enough of this.

The delayed police investigations have also resulted in the possible dilution of evidence.

The High Court, while criticizing the police, has been similarly ineffective as it has failed to utilize its coercive powers in ensuring the compliance of its own orders.

The manner in which the army, and the alleged perpetrator, has disregarded the police investigations and the High Court orders suggests that the army does believe itself to be governed by the rule of law.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 68

Victim Details

Mohammad Yousuf Naik [Enforced disappearance]
Age: 45
Occupation: Farming
Son of: Mohammad Ramzan Naik
Resident of: Mahu, Banihal, Ramban district

Name: Abdul Aziz Naik [Enforced disappearance]
Age: 55
Son of: Mohammad Sultan Naik
Resident of: Mahu, Banihal, Ramban district

Ali Mohammad Sheikh [Enforced disappearance]
Age: 18
Son of: Mohammad Subhan Sheikh
Resident of: Mahu, Banihal, Ramban district

Abdul Rasheed Sheikh [Enforced disappearance]
Age: 40
Son of: Abdul Rehman Sheikh
Resident of: Mahu, Banihal, Ramban district

Mohammad Kamal Naik [Enforced disappearance]
Age: 40
Son of: Abdul Razzak Naik
Resident of: Mahu, Banihal, Ramban district

Alleged Perpetrators

1. Captain Gill, 2 Jat, Dori Camp
2. Two starred officer, 2 Jat, Dori Camp [as in November 2002]
3. Brigadier, at Brigade Headquarters of 2 Jat, Banihal [as in November 2002]

Case Information

On 5 November 2002, Mohammad Kamal Naik left for Dandewad, Kulgam to collect ration for the house. A few days later, Mohammad Yousuf Naik, Abdul Aziz Naik, Ali Mohammad Sheikh and Abdul Rasheed Sheikh also left for Dandewad, Kulgam.

On 10 November 2002, all five of them began their journey back home. Mohammad Kamal Naik was a little behind the other four people, as he was older. On top of the mountain, near Mahu, Mohammad Yousuf Naik and Abdul Aziz Naik stopped for prayers as they were fasting. Ali Mohammad Sheikh and Abdul Rasheed Sheikh moved ahead, and as they went further, they met Abdul Rahim, son of Ramzan Bhat, and Habib Ganai, son of Abdulla Ganai. Abdul Rahim asked them why they were moving quickly. They said that they were in a rush as the army was behind them, and that Mohammad Yousuf Naik and Abdul Aziz Naik

97 Kashmir Reader, <http://kashmirreader.com/10132012-ND-igp-to-file-personal-affidavit-5577.aspx>, 13 October 2012.

were trailing behind. A little ahead of Abdul Rahim, they met Habib Ganai.

At that point, army personnel of 2 Jat, Dori camp caught hold of them. Along with Habib Ganai, Akbar Bhat, son of Habib Bhat, witnessed this. Habib Ganai and Akbar Bhat lived in that area. Ali Mohammad Sheikh and Abdul Rasheed Sheikh were beaten by 8-10 army personnel and taken away. Soon after this, people in the area, particularly Rehman, son of Aziz Naik, and Rahim, son of Habib Naik, saw Mohammad Yousuf Naik and Abdul Aziz Naik also caught by army personnel and taken away. There had been a crackdown on the hill by the army.

On that day, at about 5 pm, Habib Ganai came and informed people at Mahu, particularly Abdul Rasheed, the Numberdar [and Mohammad Yousuf Naik's brother], that the army had taken away some people from the hill. The villagers took no immediate action.

But, a short while later, the army arrived at the house of Ali Mohammad Sheikh's father, Mohammad Subhan Sheikh. An army officer with two stars, who had blue eyes, accompanied them. The officer, pointing at the Numberdar's house, asked whose it was. The Numberdar confirmed that it was his. The officer then pointed at Subhan Sheikh's house, and on being informed about whose house it was, decided to search it. One of the army personnel recorded Subhan Sheikh's name on his hand. The search took about an hour. The *kuthar* of the house was also searched. That concluded the search and people returned to their houses.

But, at 1 am at night, the same officer returned with some men and woke up Subhan. Mohammad Subhan and his wife were sent out of the house, and the house was searched again. The army said that two boxes were missing. In response, Mohammad Subhan was angry about his missing son. The officer said that his son would not go anywhere and would be fine.

The next morning, 40-50 villagers headed to Dori. At this point, the villagers thought only four people were missing. They did not know that Mohammad Kamal Naik was missing as well. At the Dori camp, the villagers met Captain Gill. Captain Gill had arrived at the Dori camp, which was itself new, around a month back. The villagers told Captain Gill about the search conducted and they pointed out the blue-eyed officer who conducted the search. They asked for permission to go to Dandewad to check the status of the four people missing. Captain Gill responded by saying that there was a crackdown on, and he denied having detained anyone. That evening, the army burnt the houses of the Bakarwals.

The next day, the following people went to Dandewad: Abdul Rasheed Sheikh's cousin Rashid; the Numberdar's son Irshad; and Mohammad Kamal Naik's son Ghulam Hassan Naik. They returned with information that five people had reached there, and

then left. On hearing this information, the villagers headed to Banihal that evening. On the way, they crossed the 17 Rashtriya Rifles [RR] Camp at Mohibal, headed by a Major Dalal. There were around 200 villagers in total heading to Banihal. At Banihal there was a massive protest and shops were also shut. The villagers went to the Tehsildar, then the SHO, and finally the Brigadier of the 2 Jat. The Tehsildar accompanied the protesting villagers. The Brigadier asked the villagers not to worry and said that if his army personnel had detained the five people, nothing would happen to them. The Brigadier asked the protesting villagers to return to their village. They were informed that his Deputy would come in a helicopter and meet with them. The police was sent to accompany the villagers back. The villagers then returned to Mahu.

The next morning, the Deputy arrived. He asked Captain Gill to tell him the truth. Then they went to a side and talked privately. The Deputy then told the villagers not to agitate. He said that one person, Mohammad Kamal Naik had been eaten by a bear, and that the others would be released on 17 November 2002. Those who witnessed this statement are Mohammad Kamal Naik's son Ghulam Hassan Naik and the Numberdar's son Irshad.

On 17 November, the villagers went to the headquarters at Banihal. There were 10-12 villagers in total on this occasion. The Brigadier informed them that one person had been eaten by a bear, and the other four persons had been released and subsequently there is no information on their whereabouts. The Numberdar responded by asking him to tell the truth and by saying that the detained persons should have been released to the villagers. The Brigadier further said that they had a militant intercept which talked about the kidnapping of these persons.

The villagers found goods belonging to the persons in the forest. The police also took information from Dandewad. A First Information Report [FIR] was lodged by the police. Further, a person named Mohammad Iqbal, son of Ahad, resident of Mahu, states that he saw four people in the Dori camp. He identified the missing four people as: Mohammad Yousuf Naik, Abdul Aziz Naik, Ali Mohammad Sheikh and Abdul Rasheed Sheikh. He probably saw them on 10 or 11 November 2002.

On 19 November, an army officer came to the village and took statements from the villagers. He also brought Captain Gill and the blue-eyed officer for the purposes of identification. Captain Gill said: "come fight like a lion, you are lying". The Numberdar nonetheless identified him.

After about 10-15 days, the 2 Jat army left from all parts of Banihal.

The Numberdar of Mahu, Banihal, Abdul Rashid,

gave the above statement to the IPTK on 7 December 2014.

On record is FIR no. 194/2002 under sections 364 [kidnapping or abducting in order to murder], 365 [kidnapping or abducting with intent to wrongfully confine], 34 [in furtherance of common intention] Ranbir Penal Code [RPC] dated 17 November 2002 at Banihal Police Station. The FIR, a translated version of it, states that the four persons [the fifth person is not mentioned] left on 7 November 2002, and returned on 10 November 2002. At about 5 pm, Mohammad Yousuf and Abdul Aziz were taken by the army, when they were 1 km from the village, while Ali Mohammad and Abdul Rasheed were picked up closer home adjacent to the water mill of Ghulam Mohammad Thanu. Information was sought through RTI dated 14 November 2014 but no information was provided.

The families had also filed a case in the Jammu High Court but could not pursue it because of the paucity of money. Around Rs. 15,000 was spent on the High Court process.

The families filed two cases at the State Human Rights Commission [SHRC] [2003/304 and 2003/303]. They received Rs. 1 lakh each as ex-gratia relief on 25 March 2006. The SHRC decision seems to have arrived in January, which recommended a crime branch investigation, and it appears that the Crime Branch was tasked with this. On record is an order of the Additional Deputy Commissioner Doda dated 25 March 2006, granting Rs. 1 lakh to all five families.

The Inspector General of Police, Jammu zone, Jammu, informed the SHRC on 27 April 2007, in the matter of the complaint of Rehmi, wife of Mohammad Yousuf Naik [SHRC/2003/303] that the case had been closed as untraced on 17 November 2003. This was based on a report by the Superintendent of Police, Ramban dated 23 April 2007. This communication states that, on 14 November 2002, a missing report, vide DD report no.4, was entered at Banihal Police Station for the four persons. Following initial enquiries, it was stated that the 2 Jat Camp "Mohu" had taken them. FIR was filed. Investigation was carried out, statements from Dandwad were taken, and information relating to the militant intercept was inquired into. During investigations, it was learnt that the fifth person had also been kidnapped. This letter also states that it was reported that Ali Mohammad Sheikh and Abdul Rasheed had been seen being taken by some men in combat dress "at a distance of about 1 km". The civilians suspected that all the people kidnapped had been kidnapped by "nafri of 2 Jat". But, the investigations concluded against this and exonerated the 2 Jat. Instead, reliance was placed on an intercept of militants recorded on 13 November 2002 in which the phrase "they were telling to shift the persons to some other un-known place" was made the basis to conclude that the militants, in disguise in combat dress, had carried out the kidnappings. The

missing people could not be traced. The investigation was closed as untraced on 17 November 2003. By communication dated 30 May 2007, Rehmi was directed to file a rejoinder.

The evidence provided clearly indicts Major Gill and the other unnamed officer [but rank has been provided including one piece of identifying information]. Further, there are numerous witnesses whose statements may be recorded to indict the alleged perpetrators. Yet, it appears that the police have closed the case as untraced. Under international criminal law principles of command responsibility it is clear that the Brigadier at Banihal would be indicted for failing to take action following receiving information of a crime having been committed by a person under his effective control.

Case No. 69

Victim Details

Mohammad Hussain Ashraf [Enforced Disappearance]

Age: 22

Occupation: Carpet weaver

Son of: Mohammad Yousuf Ashraf

Resident of: Ashraf Mohalla, Mir Behri, Rainawari, Srinagar

Alleged Perpetrators

1. Captain G. Rathee, Adjutant, 7 Para, Rashtriya Rifles [RR], Army
2. Colonel Rajbeer Singh, 7 Para, Rashtriya Rifles [RR], Army
3. V. K. Mishra, MT Unit, Army
4. Naik [Corporal] Balbir Singh, 7 Para, Rashtriya Rifles [RR], Army
5. Havaldar Balakrishna Sohan [Retired], 7 Para, Rashtriya Rifles [RR], Army

Case Information

Mohammad Hussain Ashraf was picked up by the personnel of the 7 Para, RR, Khrew Camp, on 24 May 2003 at Sempora, Balhama while he was waiting to board a vehicle for his residence. Mohammad Hussain Ashraf was picked up in vehicle no. 98-B-065366 P and has disappeared since. Mohammad Hussain Ashraf had no affiliations with any militant organization.

The family of Mohammad Hussain Ashraf filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, Section 491 Criminal Procedure Code, 1989 (CrPC) 17/2003] seeking directions to the respondents to identify the location of Mohammad Hussain Ashraf⁹⁸.

98 Information on the petition number was sought through RTI on 2 July 2012. No information was provided. Information on this petition was sought again on 4 April 2014.

The respondents contended that Mohammad Hussain Ashraf “deranged, mentally unbalanced”, was lifted by the army on 24 May 2003 but was released as he was mentally unsound. Further, that a report was lodged on 28 May 2003 at the Pantha Chowk Police Station.

On preliminary enquiry, it was found that Mohammad Hussain Ashraf was lifted by the 7 Para, Khrew Camp in a vehicle bearing registration no. 98-B-065366 P. On further enquiry by the police it was ascertained that after the arrest the whereabouts of the arrested person were not revealed and thereafter a First Information Report [FIR] no. 34/2003 u/s 364 [Kidnapping/Abducting to murder], 302 [Murder], 120-B [Criminal Conspiracy], 201[Causing disappearance of evidence/giving false information] Ranbir Penal Code, 1989 [RPC] was registered at Pantha Chowk Police Station⁹⁹. During the investigations, “Army Captain Adjutant for CO (G. Rathee)”, revealed that Mohammad Hussain Ashraf was arrested but then released after being found to be “mentally retarded”. On 11 November 2003 an enquiry was ordered, and conducted by the 1st Additional Sessions Judge, Srinagar [the date of the enquiry report is unclear].

The 7 August 2012 communication from the Jammu and Kashmir Police states that this case was chargesheeted on 30 May 2011. Further, the investigation documents provided refer to Naik [Corporal] Balbir Singh, 7 Para RR and Havaladar [Retired] Balakrishna Sohan, 7 Para RR, as the persons accused of the crime as they arrested the victim and they say they had handed him over to their officers at the Badami Bagh Cantonment, Army. By communication dated 30 November 2013 from the Jammu and Kashmir Police a copy of the chargesheet was provided. By communication dated 22 April 2014 from the Jammu and Kashmir Police information was provided that the chargesheet in the case had been filed before the competent court in the absence of the accused and was sub-judice.

The document on record that may be analysed is the enquiry report.

The enquiry report begins by stating that notices were issued to the Commanding Officer, 7 Para, RR. The Commanding Officer did not choose to associate with the enquiry but submitted a reply/rejoinder. It was stated that on 24 May 2003 a Quick Reaction Team [QRT] from 15 Corps Battle School consisting of troops of 7 Para was directed to accompany a Mahindra jeep for repairs at Choudhary Motors located at Sempora. The jeep belonged to the 15 Corps Battle School, Khrew. While the troops were deployed at Choudhary Motors, a civilian truck driver informed the QRT that person had threatened him and

had boasted that he was a terrorist. When the QRT approached the truck, this person jumped out and started running. He was pursued and caught. He was found to be mentally unsound and he was left there and allowed to go.

The Commanding Officer has denied that the person was picked up and taken in the vehicle. He admitted that the relatives of the person visited the unit in Shershali and they were politely informed that the troops had not picked up and detained any person on 24 May 2003.

The Government of Jammu and Kashmir and its functionaries were represented by the Additional Public Prosecutor during the enquiry. Further, the Station House Officer [SHO], Pantha Chowk Police Station, submitted his reply and it was stated that a preliminary enquiry was conducted and it was found that the victim was lifted by the 7 Para, RR, Khrew Camp. Thereafter, an FIR was registered. During investigations the statements of witnesses were recorded. The officers of the army did not respond to requests for information. But, by communication dated June 2003, “Captain Adjutant for Col. G. Rathee” to the Senior Superintendent of Police [SSP], City East, it was stated that Mohammad Hussain Ashraf was in a truck and had threatened the driver by calling himself a terrorist. The QRT team approached the truck, chased after him, caught him but on finding him mentally retarded, they released him. But, crucially, the SHO stated that during investigation Mohammad Hussain Ashraf was found not to be mentally unsound.

During the enquiry, witnesses were led on behalf of the petitioner in the matter, in addition to the petitioner's evidence. No evidence was led by either the Government of Jammu and Kashmir or the Commanding Officer, 7 Para, RR. Below is a summary of the relevant evidence:

- Ghulam Mohammad Ashraf, who lived in the same neighbourhood of Mohammad Hussain Ashraf and employed him in his carpet weaving centre at Mir Behari as a weaver, stated that Mohammad Hussain Ashraf was mentally sound. The witness heard about the abduction of the victim “last year” [it is unclear when his testimony was recorded] from Ali Mohammad, a resident of Balhama, whose house Mohammad Hussain Ashraf had gone to. All efforts to trace him were made but to no avail. During the cross-examination by the Additional Public Prosecutor, the witness stated that Mohammad Hussain Ashraf had been working as a carpet weaver for the last ten years and was not associated with any political or militant organization.
- Irshad Hussain, living in the same

⁹⁹ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. By communication dated 7 August 2012 from the Jammu and Kashmir Police, a copy of the FIR and other investigation documents were provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

neighbourhood as Mohammad Hussain Ashraf and working as a carpet weaver, stated that “last year” [it is unclear when his testimony was recorded] in the month of May Mohammad Hussain Ashraf had gone to the residence of his relative, Ali Mohammad Bhat at Balhama. The next day, on 24 May 2003, Ali Mohammad Bhat came to the residence of the petitioner and told him that the army had picked up his son. The petitioner and his wife went to Balhama where they got the confirmation of the arrest of their son. The next day the witness himself went to Balhama and learnt that the army had picked up Mohammad Hussain Ashraf on the road side at Sempora, “near the Crusher [crusher]”. A work shop was also located there. The abduction was confirmed by the mechanics of the work shop. The army personnel had come to the work shop to repair their vehicle. The mechanics said that the army had taken Mohammad Hussain Ashraf “to village” and he was not handed over to any person nor let off. Mohammad Hussain Ashraf was mentally sound and was working as a carpet weaver. Mohammad Hussain Ashraf was not remotely connected with militancy and was not a member of any political organization. A search was launched for Mohammad Hussain Ashraf but he was not traced. During the cross-examination by the Additional Public Prosecutor, the witness stated that he had known Mohammad Hussain Ashraf for the last seven / eight years and had good relations with him and used to visit his house.

- Yasir Ahmad Malik, a mechanic at the Choudhary work shop at Sempora, stated that about “one year ago” [it is unclear when his testimony was recorded] RR personnel came to the work shop to repair their vehicle. In the meantime the RR personnel brought a boy to the work shop and interrogated him there. They then took the boy along with them in the vehicle. The army had come in one Mahindra Jeep and truck. A few hours later the army once again came to the workshop and asked the witness and others to show them the way towards Balhama as they wanted to hand over the boy to the person with whom the boy had stayed the night with. The witness and another mechanic, Shabir Ahmad Bhat, accompanied the army personnel to Balhama. The boy had told the army that he had stayed for a night at Balhama with a person who owns the rice husking machine. On reaching Balhama the army told the witness and Shabir Ahmad Bhat to go back. The boy was not released by the army in the presence of the witness and nor was he handed over to the person with whom he had stayed for the night. The following day, the petitioner and his wife came to the workshop to enquire about the boy. The witness, Shabir Ahmad Bhat and the manager of the work shop took them to Balhama. The petitioner and the manager also went to the RR Camp. There they were told to go to another RR Camp at Khrew. The boy was not released. The witness also stated that during the interrogation at the work shop the boy had not

been beaten by the RR personnel. During the cross-examination by the Additional Public Prosecutor, the witness stated that the boy was not a militant and was 20/21 years old.

- Shabir Ahmad Bhat, a mechanic at the Choudhary work shop at Sempora, stated that “last year” [it is unclear when his testimony was recorded] RR personnel came to the work shop for repairing their Mahindra vehicle which had developed some defects. They had also come in a military truck. The manager of the work shop, Zubeer Abas, told the witness to start repairing the vehicle. Meanwhile, the army had picked up “the boy” and brought him to the work shop. The boy was interrogated by the army. Thereafter, the army took the boy along with them in their vehicle. The boy was about 22/23 years old. The boy was not released by the army at the work shop. After one or two hours the army returned to the work shop. They sought assistance to find their way to Balhama so that the boy could be handed over to the person with whom he had stayed the night. The witness and “Mohammad Yassir” accompanied the army in a jeep. Another jeep and a truck followed this jeep. The boy had told the army that he had stayed at Balhama with a person who owned a rice husking machine. On reaching Balhama and the house of the person who owned the rice husking machine, the witness and the person accompanying him were asked to return. The army did not release the boy in the presence of the witness and nor was he handed over to any person. “Next or 3rd day” the petitioner came to the work shop to enquire about the boy. The manager, the witness, the petitioner and his wife [Khazri] went to the RR Camp, Khrew. The petitioner and manager went inside while the others waited outside. The army told them to go to another camp situated at Sheer village. At that camp they were told that their officer was not present in the camp. They then returned to the work shop. The petitioner and his wife came several times after this to search for the victim. The witness did not accompany them to the army camp again. The boy was not beaten during the interrogation by the army at the work shop. During the cross-examination by the Additional Public Prosecutor, the witness stated that the boy was not carrying any arms when he was brought to the work shop.

- Ali Mohammad Bhat stated that in the year 2003, “after the month of Muharram on the day of festival at Dargah”, Mohammad Hussain Ashraf came to his house at Balhama and stayed there for a night. The witness was related to Mohammad Hussain Ashraf. On the following morning, Mohammad Hussain Ashraf left his house and the witness was later informed that Mohammad Hussain Ashraf had not reached his house but was arrested by the army near Sempora. On the same day, at 3:00 pm, the army along with the victim raided his house but no illegal items were found. Mohammad Hussain Ashraf was then taken back by the army i.e. he was not released or handed

over to the witness. The witness then informed the petitioner about the events. The petitioner then proceeded to search for the victim but could not trace him anywhere. Mohammad Hussain Ashraf was mentally sound. The army had picked up Mohammad Hussain Ashraf a little away from the work shop at Sempora. During the cross-examination, the witness stated that Mohammad Hussain Ashraf was not associated with any organization. The witness had no knowledge on which battalion the army personnel belonged to.

- Nissar Ahmad, the Station House Officer [SHO] of Tral Police Station, stated that in the year 2003 he was posted as Division Officer of Police Division Khrew. On 25 May 2003, the petitioner came and informed him that his son had been picked up by unidentified army near Sempora. The witness instructed him to approach the Pantha Chowk Police Station. On 29 May 2003, the witness returned and informed him that he had approached the 32 RR and 15 CBS. He came to know that the victim had been picked up by the 7 Para army on 24 May 2003 near Sempora and was taken in vehicle no.98/B/06536P. "He" [it is unclear whether this is a reference to the witness or the petitioner, but more likely the witness] contacted the Colonel of the 7 Para, Rajbeer Singh [alleged perpetrator no. 2] and Captain Rathee [alleged perpetrator no.1] who confirmed that the victim had been picked up at Sempora, near Choudhary Motors, on suspicious basis and then had been let off at the same place. On being asked in whose presence the victim had been released or to whom he had been handed over, both the army officers could not give a satisfactory reply. Thereafter, he informed the SHO, Pantha Chowk Police Station of the matter. No damage was done to his testimony during the cross-examination by the Additional Public Prosecutor.

- Nissar Ahmad, SHO Pantha Chowk Police Station, stated that in November 2003 he was posted as SHO, Pantha Chowk Police Station. On 24 May 2003, the petitioner had lodged a report on the abduction of the victim near Sempora by the army in jeep no. 98-065366. Preliminary enquiry was conducted by the then SHO "Nizir Ahmad" who found that Mohammad Hussain Ashraf had been picked up by the 7 Para army but was not released. FIR no. 34/2003 u/s 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was registered and initial investigation was conducted by "Nazir Ahmad". Statements of witnesses were recorded, and on his transfer, the witness took up the investigations in November. These investigations confirmed the abduction and the fact that Mohammad Hussain Ashraf had not been released. The version given by the army, of the release of the victim, was found to be incorrect. Further, while it was not found that Mohammad Hussain Ashraf was mentally sound, sufficient evidence was collected to show him to be a "normal human being" not suffering from any mental disease and he was not mentally unsound. Further, the driver of the jeep

was found to be V.K. Mishra [alleged perpetrator no. 3] who belonged to the MT Unit. The driver was not produced before the witness but the army stated in writing that he had been transferred to some other unit [it would appear to a 7 Para RR unit stationed outside Agra]. The army had not cooperated with the investigation. During cross-examination by the Additional Public Prosecutor the witness stated that evidence had been found to show that the victim was not a militant nor associated with any organisation.

- Mohammad Yousuf Ashraf, the petitioner and father of Mohammad Hussain Ashraf, stated that his son, aged 22, was a labourer and carpet weaver. On 23 May 2003 he had gone to the residence of Ali Mohammad Bhat. On 24 May 2003, Ali Mohammad Bhat informed the witness that Mohammad Hussain Ashraf had been arrested by the army at Sempora. The witness went to Balhama to enquire after his son. He was asked to contact the Khrew Camp of the army. He lodged a report with the SHO, Pantha Chowk Police Station. He also received information about the events on 24 May 2003 from Yassir Ahmad Malik and Shabir Ahmad. The witness went on the "next day" along with police and his wife to the RR Khrew Camp. The police went inside, while he and his wife waited outside. The police came out and informed him that the army informed them that Mohammad Hussain Ashraf was in the custody of 7 Para. The witness along with the police went to the 7 Para army and were told to come the next day. The Officer of the 7 Para army came to the police station and confirmed to the witness that Mohammad Hussain Ashraf was in their custody and asked the witness to come to the camp on the following day to collect Mohammad Hussain Ashraf. On the next day he went to the 7 Para army camp and met Colonel Rajbeer Singh but Mohammad Hussain Ashraf was not handed over. The witness was told that the boy had been released. No damage to his testimony was done on cross-examination by the Additional Public Prosecutor.

Based on the above evidence, the enquiry report confirms the abduction of Mohammad Hussain Ashraf and confirmed that Mohammad Hussain Ashraf remained in the custody of the 7 Para army personnel.

Further, the version given by Colonel Rajbeer Singh was found to be contrary to facts. Mohammad Hussain Ashraf was not a militant and was mentally sound. The 7 Para RR army was accountable for the disappearance of Mohammad Hussain Ashraf.

Before further analyzing the enquiry report, a few comments need to be made:

- The testimony of Yasir Ahmad Malik on Mohammad Hussain Ashraf antecedents, i.e. not being a militant, appear to not be based on any personal knowledge as the witness does not appear to know Mohammad Hussain Ashraf.

- Witness Shabir Ahmad Malik refers to a "Mohammad Yassir" accompanying him with the army personnel to Balhama. Despite the minor discrepancy in the name, it would seem reasonable to conclude that this was witness Yasir Ahmad Malik. But, Shabir Ahmad Malik's version of events after the petitioner came to the work shop differs in some respects from Yasir Ahmad Malik's version. Yasir Ahmad Malik states that he was a part of the group that accompanied the petitioner and his wife that day, whereas Shabir Ahmad Malik does not include him. Further, Yasir Ahmad Malik states they went to Balhama and then a RR Camp and then finally to the RR Camp at Khrew. Shabir Ahmad Malik does not mention going to Balhama and he states they went to the Khrew Camp first and then to the camp at Sheer village. Further, Yasir Ahmad Malik appears to suggest that only the manager and the petitioner went to the RR Camp while Shabir Ahmad Malik states that the entire group was present. Further, the petitioner's evidence seems to contradict these two witnesses as well in terms of the camps approached and the persons present.

Despite the above inconsistencies, the enquiry report's conclusions appear reasonable. The role of V. K. Mishra [alleged perpetrator no. 3] is clear. Colonel Rajbeer Singh [alleged perpetrator no. 2] and V.K. Mishra [alleged perpetrator no. 3] also appear to have knowledge of the abduction of the victim.

Further, their role in the incident must be considered in light of the fact that they were unable to produce any evidence of the release of the victim by personnel under their command.

In these circumstances, they would also be reasonably indicted. Naik [Corporal] Balbir Singh, 7 Para RR [alleged perpetrator no.4] and Havaladar [Retired] Balakrishna Sohan [alleged perpetrator no.5] have been found involved in the crime through investigations.

In addition to why it took eight years for a chargesheet to be filed in this case it needs to be ascertained whether the chargesheet led to any prosecutions.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 70

Victim Details

Manzoor Ahmad Mir [Enforced Disappearance]
Occupation: Mason
Son of: Ghulam Mohammad Mir

Spouse: Haseena
Resident of: Tantray Pora Delina, Baramulla District

Alleged Perpetrators

1. Captain Atul Sharma [Operational name: Sameer], In-charge, 22 Rashtriya Rifles [RR], Army, Camp Delina
2. Mohammad Yousuf Mir, Government Gunman [Ikhwan]
3. Manzoor Ahmad Mir, Government Gunman [Ikhwan]

Case Information

Manzoor Ahmad Mir was picked up from his house on 7 September 2003 and has subsequently disappeared. The family of the victim states that Captain Atul Sharma, along with two Ikhwan's, Mohammad Yousuf Mir and Manzoor Ahmad Mir, and 20 to 25 soldiers of the 22 RR arrived at the victim's residence at about 10:30 pm and arrested the victim. No incriminating material was found in the house. The family of the victim approached the 22 RR for the release of the victim, but he was not released. The family also states that after the abduction Captain Atul Sharma was shifted to a camp at Bomai, Sopore

A body identified to be that of the victim was exhumed from the 22 RR camp on 6 July 2006 [on the site allocated for the construction of a hospital]. The family identified this body as being that of the victim based on certain identifiers. The family also provided their blood and other samples to the Government on 29 July 2006 for the purposes of establishing the identity of the body exhumed, but they are yet to get a confirmation that the body was indeed that of the victim. Two months subsequent to sending the samples, the brother of the victim approached SSP, Baramulla, Muneer Khan and DSP [Operations] Junaid who informed him that the DNA testing report did not match the dead body with the victim. The family of the victim also states that after about one year of the abduction of the victim, the Commanding Officer [said to be an uncle of Captain Atul Sharma] of an army camp at Sopore sought to compromise with the family of the victim for a sum of Rs. 2,50,000. The brother of the victim also says that he was harassed and a false case of possession of arms and ammunitions was almost placed on him, but due to the intervention of certain higher authorities, he was able to escape being falsely implicated.

The family of the victim gave a statement to the IPTK on 29 December 2011.

FIR no. 224/2003 u/s 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Baramulla Police Station¹⁰⁰.

¹⁰⁰ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 22 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

The 22 May 2012 communication from the Jammu and Kashmir Police stated that the case had been chargesheeted. By communication dated 22 April 2014 from the Jammu and Kashmir Police, a copy of the chargesheet without annexures was provided.

The State Human Rights Commission [SHRC] was also approached by the family of the victim, and on 30 December 2004 the SHRC recommended ex-gratia government relief of Rs. 1,00,000 to the next of kin of the deceased and compassionate employment under SRO-43 [Statutory Rules and Orders].

Further, the family of the victim filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 402/2005] for action on the recommendations of the SHRC. The final order of the High Court was delivered on 17 April 2006 with an "observation" that the recommendations of the SHRC may be implemented.

A charge sheet was split against Captain Atul Sharma, being from the army, and against the other two alleged perpetrators, being non-army personnel. The charge sheet was produced before the Sessions Judge, Baramulla on 20 December 2003. The Sessions Judge, Baramulla, on 9 October 2004, framed charges against Mohammad Yousuf Mir and Manzoor Ahmad Mir.

The family of the victim filed another petition before the High Court [OWP 380/2006]. This petition was filed against a 31 August 2005 order of the Sub-Judge, Judicial Magistrate, Baramulla which stayed proceedings on the charge sheet against Captain Atul Sharma and stated that "no proceedings can take place against the accused" till necessary prosecution sanction is obtained [although the petition itself is wider and refers to issues relating to investigations as well]. Therefore, no cognizance was taken of the charge sheet. The High Court, on 21 April 2007 found complete non-application of mind with regard to this order and stated that the Magistrate "should not have acted on the application of the Army, as the Army was not a party before the court at all". The order was therefore quashed. But, mistakenly, the High Court, while clearly referring to the 31 August 2005 order, ordered that a 9 October 2004 order be quashed. A review petition was filed against this order.

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Information was provided.

The Ministry of Defence, in its affidavit before the High Court in 2009 on sanctions for prosecution, stated in relation to this case that sanction had been declined in February 2009. The Ministry of Defence, in response to an RTI on 10 January 2012 on sanctions for prosecution, stated in relation to this case that sanction had been declined on 23 February 2009. Further, that the allegation was motivated by vested interests to malign the image of security forces. Neither any operation was carried by any unit in the area nor any person was arrested as alleged.

The family of the victim filed a petition before the High Court [OWP 1091/2011] and challenged the denial of sanction¹⁰¹. The Union of India and Captain Atul Sharma denied that they had any role to play in the incident.

The SHRC in its order of 30 December 2004 found in favour of the victim's family and confirmed the allegations made. This confirmation was based on the charge sheets filed against the accused, and a report received from the Inspector General of Police [IGP], Kashmir dated 16 July 2004. The IGP's report, based in turn on a report by the Senior Superintendent of Police [SSP] Baramulla, states that during the course of investigation the army authorities were requested several times to cooperate with the investigative agency but did not. The report states that "as per evidence collected a case was prima-facie established against Captain Atul Sharma of 22 RR and others". The report also states that "in view of the circumstantial evidence the issue is suspicious as the person has been eliminated and also the corpse has been destroyed as the same could not be recovered". Also of value is a reference in a letter dated 17 December 2003 from the police authorities in Baramulla to the Deputy Commissioner, Baramulla that the victim was not found to be involved in any subversive activities. But, the family of the victim state that they are yet to receive any benefits recommended by the SHRC.

Therefore, it would appear to be unfortunate that in a case where the police authorities, and the SHRC, have found in favour of the victim and indicted the alleged perpetrators, the Ministry of Defence has denied sanction for prosecution of the main accused, Captain Atul Sharma. Further, it is noteworthy that it took the Jammu and Kashmir Police, Government of Jammu and Kashmir and Ministry of Defence six years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

The only discernible reason for the denial of sanction appears to be that there was no operation carried out by the concerned unit and that the victim was not arrested. It is difficult to understand how the Ministry of Defence reached this conclusion as the material before it, presumably the chargesheets prepared by the police, indicted the alleged perpetrators. Further, the family of the victim state that they have not been provided the benefits ordered by the SHRC. Also, the family state that Mohammad Yousuf Mir and Manzoor Ahmad Mir have received bail. Therefore, despite an early indictment of all three accused persons, two are released on bail, with no indication of the trial reaching completion, and sanction has been declined for prosecution of Captain Atul Sharma. Further, over the last six years the State has failed to produce the results of the DNA tests on the body exhumed.

101 Information on the petition number was sought through RTI on 2 July 2012. No information was provided. Information on this petition was sought again on 4 April 2014.

Case No. 71Victim Details

Mohammad Yousuf Kumar [Torture and Enforced Disappearance]

Age: 35

Occupation: Islamic Scholar

Son of: Abdul Razzak Kumar

Spouse: Fatima

Resident of: Pogal, Banihal, Ramban District

Alleged Perpetrators

1. Major Samlok Dass, 23 Rashtriya Rifles [RR], Army, Camp Ukhral Tehsil, Pogal, Banihal
2. Commanding Officer [Colonel] Sharma, Army, Nachlana, Headquarters
3. Captain Chouhan, 23 Rashtriya Rifles [RR], Army, Camp Ukhral Tehsil, Pogal, Banihal
4. Subedar Rampaul, 23 Rashtriya Rifles [RR], Army, Camp Ukhral Tehsil, Pogal, Banihal
5. Naik [Corporal] Manoj Singh, 23 Rashtriya Rifles [RR], Army, Camp Ukhral Tehsil, Pogal, Banihal
6. Sepoy Sandeep Singh, 23 Rashtriya Rifles [RR], Army, Camp Ukhral Tehsil, Pogal, Banihal
7. Sepoy Mohinder Singh, 23 Rashtriya Rifles [RR], Army, Camp Ukhral Tehsil, Pogal, Banihal

Case Information

On 10 January 2004 Mohammad Yousuf Kumar, along with his brother Ghulam Mohammad Kumar, was on his way to Jammu when he was picked up by personnel of the 23 RR at Kot Pogal. The victim and his brother were taken to the Government High School at Pogal and tortured by Major Samlok Dass. Their house was raided but no recovery was made. The family of Mohammad Yousuf Kumar also claims that the victim was subsequently moved to the Ukhral Tehsil camp in Pogal, Banihal where he was kept for a day. Following this, he was again shifted to the headquarters at Nachlana where he was lodged for another two days. Commanding Officer Sharma interrogated him and sent him back to Major Samlok Dass. Major Samlok Dass and Sepoy Mohinder Singh tortured the victim again in his cabin. On 16 January 2004, Ghulam Mohammad Kumar was released.

The whereabouts of the victim are not known to date. The family of the victim believes, as stated in an unsigned statement to the IPTK, that the persons responsible for the death of the victim are those named above.

A First Information Report [FIR] no. 15/2004 u/s 365

[Kidnapping/Abducting with intent to secretly and wrongfully confine], 343 [Wrongful confinement for three or more days] Ranbir Penal Code, 1989 [RPC] was filed at the Banihal Police Station following public pressure on 6 February 2004¹⁰². By communication dated 15 June 2012 from the Jammu and Kashmir Police it was stated that this case was still under investigation by Crime Branch, Jammu. By communication dated 20 November 2013 it was stated that the case was still under investigation and a copy of the FIR was provided.

The family also filed a petition before the Srinagar bench of the High Court of Jammu and Kashmir seeking completion of investigations in the case. But, it was dismissed as the brother of the victim had filed another petition before the Jammu bench of the High Court.

The State Human Rights Commission [SHRC] was also approached by the family and on 2 January 2008 the SHRC recommended ex-gratia government relief of Rs. 2,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders] to the family and recommended that investigations be carried out by the Crime Branch against "Major Dass and his associates".

The SHRC decision of 2 January 2008 provides an indictment that may be analyzed. The SHRC heard the testimony of Mohammad Iqbal Kumar who stated that the victim was killed because he imparted religious education to children which offended the personnel of the 23 RR. The SHRC also considered the report of the Superintendent of Police [SP], Ramban who stated that "Major Dass of Ukhral camp admitted that during patrolling they met Mohammad Yousuf" who subsequently admitted to them that he had contacts with the militants and "when they launched the operation Mohammad Yousuf was with them and he run away from their camp". Crucially, SP, Ramban's report states that three army persons "Subedar Rampaul, Naik Manoj Singh and Sepoy Sandeep Singh" were questioned and confirmed that the victim was brought to the "army post Ukhral" on 10 January 2004 by a party under Major Dass. On 11 January 2004 he was taken to the battalion headquarters at Nachlana. On 14 January 2004 he was brought back to Ukhral army post but he escaped during the night.

The SHRC, based on the above, indicted Major Dass and the RR personnel with him at Ukhral camp. The SHRC stated that "Major Dass was in command of this camp" and that the explanation of disappearance "is not only irrational, fantastic but is meritless" and that "the country does not require the services of such officers like Major Dass and the personnel with him". The SHRC also stated that "we are mindful of what is frequently happening during these days. Persons are

¹⁰² Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. Further information sought through RTI on 15 October 2013.

kidnapped in the sight of others and are forcibly taken out of the sight of all others and later the kidnapped and killed". "The law of presumption speaks sharply against Major Dass's explanation that he ran away in darkness". The SHRC stated that "it clearly means that they killed him and destroyed his very existence in a convenient manner".

A few points may be made in analysis of the above judgment of the SHRC. First, it must be mentioned that the SHRC based its above findings, partly, on a constant reference to the victim having been in custody for "14 days".

Based on the evidence before the SHRC it is difficult to understand the basis for this. Nonetheless, and the second point of interest, is that it is clear that the fact that the victim was with the personnel of 23 RR is beyond doubt.

Further, the fact that he was shifted from Ukhral camp to the headquarters at Nachlana, and then back, is also clear. Finally the role of Major Dass is also clearly established. What remains, and this may well be borne out by investigations that were recommended by the SHRC, is the role of the other persons that the family accuses in this incident. Based on the present evidence, and their statements to that affect, Subedar Rampaul, Naik Manoj Singh and Sepoy Sandeep Singh may find themselves accused of being accomplices. But, the role of Captain Chouhan is still to be ascertained. Further, whether the victim was first taken to the Government High School at Pogal is also yet to be ascertained.

In conclusion therefore, while acknowledging the role and need for further investigations, the SHRC judgment is a clear indictment of the army in the presumed killing of the victim and the role of Major Samlok Dass appears to be beyond doubt. But, despite the passage of eight years there appears to be no progress on the investigations.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 72

Victim Details

Irshad Amin Khan [Enforced Disappearance]
Son of: Mohammad Amin Khan
Resident of: Housing Colony, Bagh-i-Mehtab, Srinagar

Alleged Perpetrators

1. Colonel G.P.S. Gill, Para Punjab, Personal Advisor [PA] to General Officer Commanding [GOC] of 15 Corps, Lieutenant General Nirbhay Sharma, Army Headquarters,

Srinagar

Case Information

Irshad Amin Khan was called by Colonel G.P.S. Gill and the victim went and met him on 17 December 2004. The victim was kept under custody and has disappeared since. The family of the victim states that the victim was working at that time with the Intelligence Bureau [IB].

The family of the victim approached the State Human Rights Commission [SHRC] on 20 February 2008 and a final decision was issued on 5 April 2012. The Director General of Police [DGP], Jammu and Kashmir submitted a report that stated that the victim was an ex-militant who at the time of his disappearance was working with the IB.

Further, that he had been reportedly summoned by the alleged perpetrator on 17 December 2004 and has disappeared since. In its final decision, the SHRC found that "There is nothing on record to show that said Irshad Amin Khan may not have been killed after he was called and taken into custody by Col. G.P.S. Gill of 15 Corps at Headquarters Srinagar on 17.12.2004 as he has not reached home for last more than seven years". The SHRC stated that, based on rules of evidence, since the victim had not been seen for seven years, it was for the party alleging him to be alive to prove the same.

Therefore, the SHRC found it proved that the victim was taken into custody by the alleged perpetrator and placed the onus on the alleged perpetrator to prove that the victim had not been killed.

The SHRC recommended ex-gratia government relief of Rs.1,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders].

While the SHRC placed the onus on the alleged perpetrator to prove that the victim had not been killed in his custody, it is uncertain if any action was taken.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 73

Victim Details

1. Ishfaq Ahmad Bhat [Enforced Disappearance]
Age: 24
Son of: Ghulam Hassan Bhat
Resident of: Watapora, Bandipora District
2. Bashir Ahmad Lone [Enforced Disappearance]
Age: 20
Son of: Ghulam Mohammad Lone

Resident of: Shaharkote, Handwara, Kupwara District

3. Bashir Ahmad Mir [Enforced Disappearance]
Age: 22
Son of: Ghulam Hassan Mir
Resident of: Panjwa, Handwara, Kupwara District
4. Farooq Ahmad Sheikh [Enforced Disappearance]
Son of: AbdulAhad Sheikh
Resident of: Kulipora, Bandipora District

And 7 others [Enforced Disappearance]

Alleged Perpetrators

1. Brigadier Kataria, 68th Mountain Brigade, Army, Trehgam
2. Inspector Manchand Dogra, Intelligence Bureau [IB], Ministry of Home Affairs [MHA], Chowkibal

Case Information

The families of the victims state that a total of 12 persons [including the victims listed above] came across the border and surrendered before officials of the State. Subsequently, 11 of these persons have disappeared.

A petition was filed before the High Court of Jammu and Kashmir [habeas corpus petition, Section 491 Criminal Procedure Code, 1989 (CrPC) no.9/2006] by the family members of Ishfaq Ahmad Bhat, Bashir Ahmad Mir and Bashir Ahmad Lone. In this petition it is stated that the 12 victims surrendered before Brigadier Kataria. The victims had identity cards with them that were sealed and signed by Brigadier Kataria. Following their surrender, they began working with Inspector Dogra and Brigadier Kataria in their work to eradicate militancy. The victims had been made to surrender by Abdul Majid Lone [one of the 12 persons who had surrendered], who at the time of the filing of the petition was booked under the Public Safety Act [PSA], 1978 and was at the Kot Balwal jail.

Further, it was stated that the families of Ishfaq Ahmad Bhat, Bashir Ahmad Mir and Bashir Ahmad Lone used to see the victims from May 2004 to November 2004 at Chowkibal Radi and Budnambal at the houses of Abdul Rashid Khan and Nazir Ahmad Lone.

From December 2004, the victims disappeared, including Abdul Majid Lone, and their whereabouts were not known.

Despite being approached, Station House Officer [SHO], Handwara took no action. This petition was subsequently dismissed as withdrawn on 11 July 2006.

Subsequent to the above petition, another petition was filed before the High Court [HCP 13/2007], once again by the family members of Ishfaq Ahmad Bhat, Bashir

Ahmad Mir and Bashir Ahmad Lone. The petition, similar to the earlier petition, has certain additions/differences, as follows:

- The victims surrendered before Inspector Dogra, and not Brigadier Kataria as stated earlier. They were subsequently handed over to Brigadier Kataria but were utilized by both alleged perpetrators.
- A certificate is annexed to the petition, signed by an official of the IB and dated 11 July 2004. No name is provided, but it certifies that Bashir Ahmad Lone was working with the IB. It further states that the certificate is valid upto 15 July 2004. The family of the victims maintain that this was signed by Inspector Dogra.
- Abdul Majid Lone was imprisoned under the PSA in November-December 2006.

Objections were filed to the above petition by Brigadier Kataria, Inspector Dogra and the Union of India. The allegations, including the arrest of the victims or the question of them remaining in custody, are denied.

Further, it is stated that Abdul Majid Lone surrendered before the army on 12 February 2006 and was handed over to the police on the next day. His whereabouts are not known to the alleged perpetrators or the Union of India.

On 3 July 2007, the High Court ordered that a judicial enquiry be conducted in the matter. The judicial enquiry was conducted by the Principal District and Sessions Judge, Kupwara. A preliminary order was passed by the judicial enquiry on 29 August 2012.

Brigadier Kataria made the following written submissions before the judicial enquiry, relevant portions of which are reproduced below:

- A news item was provided in the petition filed in 2006 where the following names were mentioned, in addition to the victims listed above, as having surrendered: Abdul Rashid Khan, Nazir Ahmad Beg, Farooq Ahmad Sheikh and Farooq Ahmad Shah [these names have not been added to the list of victims above as they have not been independently verified].
- The earlier petition in 2006 was not withdrawn with permission to file a fresh petition.
- There are glaring contradictions between the two petitions and in the evidence led in support of the case of the family of the victims.
- The seven witnesses led by the family of the victims are contradictory and in any case do not implicate Brigadier Kataria.

Inspector Dogra and the Union of India made the following two written submissions before the enquiry, relevant portions of which are reproduced below:

A. Affidavit dated 15 March 2010

- In the petition of 2006 it was stated that the victims had surrendered before Brigadier Kataria.

- A letter was addressed by “Zoon Begum”, mother of Ishfaq Ahmad Bhat to the Minister of State, Jammu and Kashmir Home Department, which stated that the surrender had taken place before the army and that the victim remained attached with the 6 Rashtriya Rifles [RR] at Vilgam, Kupwara District.
- The certificate issued on 11 July 2004 only confirms that “Bashir Ahmed Lone” was associated with the IB for five days. Further, other details in the certificate indicate that the person was not under any duress or detention.

B. Written submissions of 10 September 2011

- There are contradictions between the 2006 and 2007 petitions, particularly as in 2006 the families of the victims had claimed that the surrender had taken place before Brigadier Kataria.
- The certificate issued on 11 July 2004 confirms that there was no surrender and the services of the person mentioned in the certificate were merely being made use of for that duration.
- The testimony of the seven witnesses in favour of the families of the victims do not prove that the alleged surrender ever took place. Further, “the petitioners are admittedly trained militants” and their disappearance cannot be attributed to the IB.

Two specific comments may be made before considering the preliminary report of the judicial enquiry:

- The letter from the mother of Ishfaq Ahmad Bhat does raise some doubt on the version of events as put forward by the families of the victims. This is compounded by a clear contradiction between the 2006 and 2007 petitions on who the victims surrendered before. But, it could be justifiably argued that clear, consistent specificity may be too much to expect from the families of the victims when dealing with the circumstances as seen in the instant case – a surrender and then meetings over a period of time, the victims perhaps working with not just two agencies but many more. The onus is on the Jammu and Kashmir Police to carry out thorough and fair investigations.
- The explanation provided by the Union of India and Inspector Dogra to the 11 July 2004 certificate does not appear convincing. If the certificate is accepted, it does lend credence to the version of events put forward by the family of the victims to the extent that at least one of the victims was admittedly working with the IB. Further explanations would need to be provided by the IB based on this one certificate alone.

The enquiry concluded by first finding certain contradictions with the prosecution witnesses. Contrary to the position taken in the High Court petition, two witnesses testified before the enquiry

that the surrender of the victims took place in December 2004 or around that period. Finally, the enquiry notes that further evidence is to be heard before a final finding may be made. Crucially, the evidence of Abdul Rashid Khan [in whose house the victims were seen] was required, along with the records of surrender of the victims.

The final enquiry report was concluded on 28 June 2013 and based on the evidence before it the enquiry held that victims 1-3 were with Manchand Dogra and were disappeared by him. “The State and Union of India” were held responsible for his actions. Therefore, ultimately, there was an indictment – certainly on Manchand Dogra.

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. Information was provided.

Despite the passage of eight years no information exists on whether any investigations or prosecutions were conducted by the Jammu and Kashmir Police in this case. It needs to be ascertained whether a FIR was even filed in this case.

The Ministry of Defence seems to have cared very little about the High Court proceedings or in instituting a process for delivering justice.

The available documents do not suggest that even a Court-Martial was conducted in this case by the army.

EXTRA-JUDICIAL KILLING

Extra-judicial killing is the killing of a person by Governmental authorities without the sanction of any judicial proceeding or legal process.

This Sub Chapter has 198 Case Studies



PART C: EXTRA-JUDICIAL KILLING

Case No. 1

Victim Details

Ghulam Hassan Naikoo [Abduction, Torture, Extra-judicial killing]
 Age: 39
 Occupation: Tailor
 Son of: Mohammad Ramzan Naikoo
 Resident of: Khwaja Sahib Mohalla, Baramulla district

Alleged Perpetrators

1. S.N.Vishnu, Lt. Colonel, Assistant Adjutant General for General Officer Commanding, 19 Infantry Division

Case Information

In the afternoon of 25 August 1984, Ghulam Hassan Naikoo was called to the Police station where the Army took him into custody for investigation. Army tortured him and he died in their custody. On 26 August, army handed over his dead body.

The case has a history: A rift had emerged between two socio-religious groups, Tablig-e-Jamaat and the Jamaat-i-Islami. Naikoo was trying to reconcile between the two groups. This did not go well with the Indian intelligence agencies as they were trying to divide the two conflicting groups who till now shared same platform. The agencies threatened Naikoo to stay away from it.

Shakeel Ahmad Naikoo gave the above statement to the IPTK on 5 November 2014.

A First Information Report [FIR] states, on behalf of S.N.Vishnu, that the victim was taken by the alleged perpetrator for investigation at approximately 5 pm on 25 August 1984 from the custody of the Station House Officer [SHO] of Police Station Baramulla. The victim complained of pain in the chest and uneasiness at about 3:15 am on 26 August 1984. He was taken to the medical inspection room where he was found dead by the Medical officer. Manzoor Ahmad, SHO Baramulla gave authority for the autopsy.

In the post-mortem report, it is stated that he was taken from his shop, and not from the SHO or Police Station, to the army cantonment for questioning on 25 August 1984 at about 3:15 pm. He was apparently brought dead to the District Hospital, Baramulla at 10:10 pm on 26 August 1984. Therefore, these details are different from FIR. It appears from this contradiction that he was not taken from the police, and he was kept for much longer than claimed. Further, he was not handed over to the police within 24 hours either.

The post-mortem notes the fracture of nasal bones. The final conclusion was that the death was caused by sub-dural hemorrhage, sub-

arachnoidhemorrhage, and laceration of the brain in both the parietal lobes. The injuries were said to be caused by a hard blunt object. The time since death was said to be 36 hours. Post-mortem was done at 11 am on 27 August. That placed the time of his death on the night of 25 August 1984.

FIR no.267/1984 u/s 302 [murder] under the Ranbir Penal Code [RPC] dated 26 August 1984 at the Police Station Baramulla. The informant seems to be SN Vishnu himself. The FIR was filed on the basis of a letter [no.31313/4/AI] dated 26 August 1984 addressed to SHO, Police Station Baramulla by S.N.Vishnu, Lt. Colonel Assistant Adjutant General for General Officer Commanding 19 Infantry Division. Information on this FIR was sought through RTI on 15 October 2013. By communication dated 22 April 2014 from Jammu and Kashmir Police, a copy of FIR and chargesheet were provided. Further information was sought through RTI dated 14 November 2014. Chargesheet was filed and subsequently the matter proceeded for a court-martial.

The status of the court-martial is not known. This case is particularly important as it appears to involve perpetrators at Division level and this case, of 1984, also suggests that torture, and other crimes, by the army were taking place before 1989 as well.

Case No. 2

[Massacres / Extra-judicial killing]

Victim Details

Ghulam Qadir Magloo
 Age: 46
 Resident of: Mashali Mohalla, Srinagar

Gulzar Ahmed Magloo
 Age: 22
 Son of: Ghulam Qadir Magloo
 Resident of: Mashali Mohalla, Srinagar

Mushtaq Ahmed Magloo
 Age: 20
 Son of: Ghulam Qadir Magloo
 Resident of: Mashali Mohalla, Srinagar

Bashir Ahmed Beigh
 Resident of: Mashali Mohalla, Srinagar

Name: Aijaz Ahmed Beigh
 Son of: Bashir Ahmed Beigh
 Resident of: Mashali Mohalla, Srinagar

Muzaffer Ahmed Beigh
 Son of: Bashir Ahmed Beigh
 Resident of: Mashali Mohalla, Srinagar

Farooq Ahmed Beigh
 Occupation: Zari work
 Son of: Mohammed Abdullah Beigh
 Resident of: Mashali Mohalla, Srinagar

Ghulam Ahmed Mir
Age: 55-60
Resident of: Mashali Mohalla, Srinagar

Fayaz Ahmed Mir
Age: 30
Son of: Ghulam Ahmed Mir
Resident of: Mashali Mohalla, Srinagar

Alleged Perpetrators

1. JK Sharma, Deputy Inspector General [DIG], 75th Battalion BSF
2. RP Bhukal, Deputy Commandant, 75th Battalion BSF
3. Gajjan Singh, Head Constable, 75th Battalion BSF
4. Uttam Singh, Constable, 75th Battalion BSF¹

Case Information

On 6 August 1990 the BSF carried out a massacre in Mashali Mohalla, and the below testimonies of the family members are evidence of the manner in which it was carried out.

The daughter of victim 1 and sister of victims 2 and 3, Tasleema Magloo, gave the below statement to the IPTK on 26 February 2015.

On 6 August 1990, the family had been hearing since morning that Jamsheed Khan [chief of Al Madad Yalgaari Ali] wanted to act against BSF troops near Islamia College. So, they left their house at around 3 pm and stayed in Mughal Mohalla, near the Mughal Masjid, till about 5:30 pm. They returned home at around 6 pm.

There were no odd occurrences in their locality till 9:30 pm, after which the interviewee heard a loud explosion [she does not know whether it was a grenade explosion or something else]. Thereafter, she heard the noise of firing outside the house [she does not know whether it was cross-firing between Jamsheed Khan and the BSF or not].

20-30 minutes later, BSF personnel barged into the nearby houses. [She later heard that they had first entered Ghulam Ahmed Mir's house, where they killed him and his son Fayaz Ahmed Mir. They then went to Bashir Ahmed Beigh's house, where they killed him and his two sons Aijaz Ahmed Beigh and Muzaffar Ahmed Beigh. They also shot Mehbooba Beigh, wife of Bashir Ahmed Beigh, on her shoulder.

Then they entered their house – 10-20 of them broke the door and barged inside. They started firing as soon as they entered. The family members were hiding on the first floor, and soon they entered the same room. Even though they had turned all the lights off, there was some light in the room since it was a full moon

night. The BSF personnel were also using matchsticks to light up the room.

Ghulam Qadir Beigh's family was also present in the same room. The interviewee saw BSF personnel beating up her brother, Gulzar Ahmed Magloo, with the butt of a gun after which they shot him. She was probably 18 at that time. She, however, remembers that they only shot at men and they eventually killed her two brothers and her father, along with their neighbor Farooq Ahmed Beigh, who was in the house with them at that time.

The BSF personnel then attacked me as well. My mother tried to protect me and snatched the cap of one of the BSF personnel in that process. She probably snatched a belt too but the interviewee does not remember clearly. The next day the cap and the belt were handed over to the Police Station Nowhatta, where the SHO was Showket [the interviewee is not sure]. He was favoring the BSF; he has now been transferred. The interviewee's mother was taken to the Police station for testifying [she is not aware of the details].

[The court martial took place after the mother's death] The interviewee does not know the name of any BSF personnel, but she remembers the faces of two of them, whom she later identified in the Kehkashan Hotel where the court martial was held. One of them wore a turban. She was taken for the court martial proceedings along with her sister, Mubeena, and Mehbooba wife of Bashir Ahmed Beigh. In the Kehkashan Hotel, two uniformed BSF personnel [who were non-Kashmiris] approached them and asked about Jamsheed Khan and other militants and if they aware of their whereabouts. One of them was Dilawar Khan. He offered to pay the sisters Rs. 5 lakhs if they would tell him about Jamsheed Khan and other militants but they refused to give any information.

Inside the courtroom set up, there was a Kashmiri who interpreted her statement to the judge [she does not know who he was]. However, he told her that the judge had decided that the two BSF personnel, who she had identified and testified against, would be hanged to death.

After that, they did not visit them again nor were they called for any other proceeding.

The family received Rs. 3 lakh as ex-gratia relief and a job appointment under SRO 43 appointment for her sister Mubeena.

The cousin of victim 7, Ghulam Qadir Beigh, gave the below statement to the IPTK on 1 March 2015.

At around 2 pm on 6 August 1990, a member of the JKLF, either Hameed Sheikh or Ishfaq Majeed [interviewee is not sure who], was arrested by the armed forces [interviewee is unaware as to which force it was] in Sanat Nagar. Interviewee is not sure

1 Names of alleged perpetrators are from: Greater Kashmir, 9 August 2015, <http://www.greaterkashmir.com/news/kashmir/mashali-mohalla-massacre-6-august-1990-relatives-seek-justice-stage-protest/193830.html>.

who the militants were as he did not witness the incident even though his tailor shop was opposite to the Islamia College; he was away since it was a Sunday and his shop was closed; he heard of the incident from others in the locality.

At around 3:30-4 pm, militants attacked a Jammu and Kashmir Police vehicle. It was later said that the militants probably belonged to the JKLF. The militants started firing on the road and they hit the walls of Islamia College too. Police personnel left their car and fled.

When his family [his wife Parveza, his three daughters Quasar, Irfana and Humaira, and his son Feroz Ahmed] heard the shots, they left the house and went to Mughal Mohalla and stayed there on the street. Farooq Ahmad Beigh, his wife Gulshana and their children Ruksana and Tariq Ahmad were also on the street in Mughal Mohalla. His family then returned home after some time. The interviewee also returned home one hour later. The situation remained normal in their locality. Their entire family went to Ghulam Qadir Magloo's house, as they would every evening. At around 8:30 pm, they heard the sound of gunshots. The BSF was firing and they set fire to two houses, those belonging to Ghulam Mohammed Baba and Ghulam Ahmed Mir.

BSF personnel first entered Ghulam Ahmad Mir's house and killed him and his son Fayaz Ahmad Mir. Then they entered Bashir Ahmad Beigh's house and killed him and his two sons Aijaz and Muzaffar. They shot another individual, Abdul Rehman, who was a worker in the house but he was eventually saved. Mehbooba, wife of Bashir Ahmad Beigh, was also shot on her shoulder.

Then the BSF entered Ghulam Qadir Magloo's house, where their entire family was. The family of Ghulam Qadir Beigh, including his three daughters, his wife and his two sons as well as that of Farooq Ahmed Beigh was also present. The BSF opened the main door of the house and entered the room on the first floor where all of them were hiding. They were abusing while entering the room. The lights in the room had been switched off.

They first killed Gulzar Ahmad Magloo by penetrating a knife into his chest and then shot him. They then killed his brother Mushtaq Ahmad Magloo. Next, they killed Farooq Ahmed Beigh. The interviewee was sitting right next to Ghulam Qadir Magloo when he was shot dead. One BSF personnel then put the barrel of his gun on his chest. But another told him not to kill him and then they left the room.

All the bodies were taken to Soura Medical Institute. The next day, they took nine coffins to bury all of them.

The court martial was held in the Kehkashan Hotel, where the family came to know that an officer named Bhukal was responsible for the entire incident.

The son of victim 8 and brother of victim 9, Reyaz Ahmed Mir, gave the below statement to the IPTK 26 February 2015.

At about 10-11 am on 6 August 1990, Jamsheed Khan

[chief of Al Madad Yalgaari Ali] asked people in the locality to leave their houses and go elsewhere, as he was going to take some action against the BSF near Islamia College. He had newly organized his Jamaat as the Al Madad Yalgaari Ali. Originally, he was a member of Al Omer. No action had been taken by the JKLF; reports regarding that were false.

As per his direction, the family left their house at around 11 am and stayed close to the Mughal Masjid in Mughal Mohalla. They returned at about 4 pm, till which time it seemed that everything was normal. Then, however, they heard that a grenade had been hurled by Jamsheed Khan's Jamaat at BSF troops near the graveyard close to Islamia College [interviewee is not sure whether it exploded or not]. When they returned, it was like nothing wrong had happened in their locality. Till 8-9 pm, the situation continued to be very normal.

Then there was a loud sound, as if a grenade had exploded. Simultaneously, firing sounds could also be heard. Later, they found out that Jamsheed Khan's Jamaat had lobbed a grenade at the BSF and the latter had resorted to retaliatory firing. It could be heard very clearly in the locality [interviewee is not sure whether the firing sounds were of cross-firing between the two groups]. As the firing stopped, the situation remained calm for an hour after that.

One hour later, however, the BSF barged into the houses in the locality. They first entered their house. The interviewee's uncle, Ghulam Rasool Mir, also lived in the neighborhood and at that time, he was at his uncle's house. He could hear the shots being fired from there. At the time of the incident, he was not aware that his house had been burnt and family attacked; he found out later through surviving family members. They broke the doors and shot at their new scooter. He returned home only after the entire massacre ended and the BSF had left the locality. He then saw his brother's body in the lane outside and his father dead on the verandah. Both of them had been shot in their chests, which had caused their death on the spot. His other brother had suffered an injury on his right thigh; blood was oozing out of the wound. His father and brother had been offering Namaz on the second floor. He knew this because he later saw two *musalah* [jainamaz] lying in the room on the second floor.

He does not know the names of any of the BSF personnel. He had not even heard the words, "*aag lagao, mereko dead body chahiye*". He was almost 26 years old at that time. He could just hear the BSF shouting and abusing.

Later, when the BSF left, people started gathering and the fire brigade also arrived. They took all the casualties to the hospital. His mother, Haleema and sister Rubi Jaan, who were with him in his uncle's house, buried the bodies in Shaheed Mazar Eidgah the next day.

2-3 days later, they shifted to his sister's house in Khrew, where they stayed for over a year. They felt disturbed those days due to the death of victims.

His friend Altaf Gowhar, who lives in Wari [close to Hawal], informed him about ex-gratia relief and job appointments under SRO 43. He must have found out from Mashali Mohalla, where divisional commissioner Wajahat Habibullah had approached the families of victims and promised ex-gratia relief and job appointments. Consequently, his friend and him visited the Deputy Commissioner office and filed the relevant applications. The Deputy Commissioner wrote on his application "appointed as a teacher in the Education department – forwarded to Director [Education]". The interviewee was then appointed as a teacher and also received Rs. 1 lakh as ex-gratia relief.

In 2006 or 2007, a BSF personnel and one from Nowhatta police station came looking for the interviewee in Mashali Mohalla. His uncle, who they met, then informed him that he needed to go to the Kehkashan Hotel. Interviewee does not remember the date on which he went there. It was like a court there and high-ranking officers were acting as judges. He saw two BSF personnel without a cap or a belt standing in the witness box. He was told that they had been suspended, as they were perpetrators. He couldn't recognize them, since he did not know who was involved in the incident. He thinks one of them wore a turban but he is not very sure. Then, one of the BSF officers told him that if he were to change his statement, then those suspended personnel would be able to resume their duties once more. The interviewee replied saying that he would never change his statement.

After that, they did not visit them again nor were they called for any other proceeding. He does not know what happened to the BSF personnel.

In addition to the above testimonies, there is on file a copy of FIR no. 57/1990 at Police Station Nowhatta which was filed by the police station itself against the BSF.

In response to an RTI on all Court Martials in Jammu and Kashmir, the BSF gave relevant information by communication dated 3 March 2014. The information was that: there were 9 victims in total. Judgment of the Court Martial held: 2 persons found not guilty, 1 person found guilty under sections 302/307/109 RPC, 1 person expired during trial. Punishment: To suffer imprisonment for life and dismissed from service. Later, the competent authority reduced the punishment.

The names of the alleged perpetrators are not in the testimonies or the BSF RTI response. They are from the internet. To that extent they require further verification. But, the actual massacre by the BSF is made out by strong evidence in the testimonies. The BSF itself accepts this. But, it appears that the killing of nine persons has led to a conviction for only one

person of the BSF and there too the punishment has been reduced subsequently.

Case No. 3

Victim Details

Mushtaq Ahmad Hajam [Extra-Judicial Killing]

Age: 23

Occupation: Government employee, Handicrafts Department

Son of: Ghulam Nabi Hajam [deceased]²

Resident of: Malik Sahib, Nowhatta, Srinagar, Presently resident of West Gate, Jamia Masjid [Yehya gate], Nowhatta, Srinagar

Alleged Perpetrators

1. Constable G. Ram Naik Lal, 2nd Battalion Central Reserve Police Force [CRPF], D Company

Case Information

On 17 August 1990, Mushtaq Ahmad Hajam was returning from his evening prayers, when personnel of the CRPF fired upon him. At the point that it happened, the family of the victim heard one gunshot. Another person, Abdul Rehman, aged 80, who was walking along with Mushtaq Ahmad Hajam at the time of the incident told the family that Mushtaq Ahmad Hajam after being stopped and while trying to show his identity card to the CRPF personnel was shot on the front part of his head, thereby discounting any chance of him being shot while he was being chased. The family of Mushtaq Ahmad Hajam was subsequently informed by both the police and the CRPF that Constable Ram Naik Lal had shot the victim. Mushtaq Ahmad Hajam had not been involved in any militancy related activities.

In 1997/1998, the brother of Mushtaq Ahmad Hajam was called to meet a CRPF officer at Barzulla Camp who assured him that Constable G. Ram Naik Lal would not be released. Further, the brother of Mushtaq Ahmad Hajam signed, after being asked to, on blank papers.

The family of Mushtaq Ahmad Hajam received Rs. 1,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders].

First Information Report [FIR] no. 63/1990 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at Nowhatta Police Station on 17 August 1990³.

² The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 that the name of the father of the victim was Mohammad Sultan. The family states that this is incorrect information.

³ Information on this FIR was sought through RTI on 7 October 2011. By communication dated 21 December 2011 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013.

The 21 December 2011 Jammu and Kashmir Police communication stated that the case was closed by declaring the perpetrators as untraced on 26 February 2011. By communication dated 9 July 2012 from the Jammu and Kashmir Police a copy of the case diary in this matter was provided. By communication dated 22 April 2014 from the Jammu and Kashmir Police a copy of the closure report was provided.

The case diary states that the Government of Jammu and Kashmir sent the case to the Ministry of Home Affairs for sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] on 13 March 1996. Sanction for prosecution was declined by the Ministry of Home Affairs on 14 September 2000. The case diary reproduces the text of the denial of sanction.

The Ministry of Home Affairs states that Constable G. Ram Naik Lal was carrying out his patrolling duties when he found Mushtaq Ahmad Hajam moving in suspicious circumstances. On being challenged Mushtaq Ahmad Hajam hastened his movements in the darkness. Constable G. Ram Naik Lal fired one round at Mushtaq Ahmad Hajam and he died.

A Court of Inquiry was constituted by the CRPF in February 1991 which found Constable G. Ram Naik Lal to be not guilty of the crime based purely on the testimony of CRPF personnel. Meanwhile, Jammu and Kashmir Police investigations found Constable G. Ram Naik Lal to be guilty based on the statements of civilian witnesses. Accordingly, the Government of Jammu and Kashmir sought sanction for prosecution under AFSPA from the Ministry of Home Affairs.

Following this request, a fresh Court of Inquiry was constituted in September 1996. One civilian witness was examined. The Court of Inquiry once again found Constable G. Ram Naik Lal to be not guilty of the crime as the CRPF personnel had been briefed that if a person did not halt on being ordered to, action was to be taken depending on the situation. As Mushtaq Ahmad Hajam hastened his movements on being ordered to stop, Constable G. Ram Naik Lal “was left with no other alternative but to fire. Considering the situation that prevailed in J&K [Jammu and Kashmir] during that period the Constable cannot be blamed. He was discharging his bonafide duties when the curfew was clamped and it has to be enforced. The very fact that he fired only one round shows that his response was not excessive and that there was no over-reaction on his part.”

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under AFSPA, stated on 6 September 2011 in relation to this case that sanction was declined.

The family of Mushtaq Ahmad Hajam gave a statement to the IPTK on 7 March 2012.

It is uncertain why the Government of Jammu and Kashmir and Jammu and Kashmir Police took six years to send the case file to the Ministry of Home Affairs for seeking sanction for prosecution under AFSPA. That too when according to the Ministry of Home Affairs the CRPF had already concluded their Court of Inquiry which exonerated the alleged perpetrator.

After the sanction was declined on 14 September 2000, it is unclear why the Government of Jammu and Kashmir did not agitate the matter further either in the court or with the Ministry of Home Affairs. Instead, the Government of Jammu and Kashmir chose to sit on the case for a further 11 years only to ultimately close the case by declaring the perpetrators untraced despite there being no dispute, including from the Ministry of Home Affairs, on the fact that Constable G. Ram Naik Lal shot Mushtaq Ahmad Hajam dead. The contestation of the Ministry of the Home Affairs is on the circumstances of the killing, which could have been further investigated and clarified to the Ministry of Home Affairs. Finally, investigations need to be conducted on what documents the brother of Mushtaq Ahmad Hajam provided his signature.

The rationale for the decline of sanction by the Ministry of Home Affairs is another example of the complete disregard for the rule of law by the armed forces in Jammu and Kashmir. In the given circumstances, Constable G. Ram Naik Lal had the clear alternative of pursuing Mushtaq Ahmad Hajam as opposed to opening fire upon him. Further, rather than shoot to kill, Constable G. Ram Naik Lal could have shot Mushtaq Ahmad Hajam, as per the standard operating procedures, below the waist. Under the guise of the “situation that prevailed in Jammu and Kashmir”, the Ministry of Home Affairs has condoned the cold blooded murder of an innocent person. Finally, both the Government of Jammu and Kashmir and the Ministry of Home Affairs should have made reference to the medical records in this case as the family of Mushtaq Ahmad Hajam contend that he was shot on the front part of the head. If true, the entire theory of the victim running away from Constable G. Ram Naik Lal would break down.

This case also provides a glimpse into the workings of the systems of justice of the armed forces. The initial Court of Inquiry by the CRPF acquitted Constable G. Ram Naik Lal presumably based on the testimony of potential co-perpetrators who accompanied him during the incident and did not hear the testimony of a single independent, impartial civilian witness. On conducting a fresh Court of Inquiry, it was considered appropriate to only hear the testimony of one civilian witness. No information was provided on what this civilian witness testified to. The instant case serves as an example to understand the processes of Court of Inquiries conducted by the armed forces and the process of determination of the grant/denial of prosecution sanction under AFSPA. This act of declining sanction and justifying the extra-judicial

killing of Mushtaq Ahmad Hajam is a moral and political indictment of the Ministry of Home Affairs.

Case No. 4

Victim Details

1. Ghulam Mohammad Lone [Abduction, Torture and Extra-Judicial Killing (Custodial Killing)]
Age: 40
Occupation: Carpet seller
Son of: Ali Mohammad Lone
Spouse: Zoon Begum
Resident of: Kripalpora Sri, Pattan, Baramulla District
2. Mohammad Ayoub Khan [Abduction and Torture]
Son of: Khushi Mohammad Khan
Resident of: Singhpora, Pattan, Baramulla District
3. Parvez Ahmad Bhat [Abduction and Torture]
Son of: Ghulam Ahmad Bhat
Resident of: Kripalpora Sri, Pattan, Baramulla District
4. Farooq Ahmad Dobi [Abduction and Torture]
Son of: Ali Mohammad Dobi
Resident of: Sherabad Khour, Pattan, Baramulla District

Alleged Perpetrators

1. Commandant⁴, 46th Battalion Central Reserve Police Force [CRPF], Camped at the Matches Factory, Baramulla [as of August 1990]

Case Information

On 21 August 1990 at about 4:30 pm Ghulam Mohammad Lone alongwith three other persons, Mohammad Ayoub Khan, Parvez Ahmad Bhat, Farooq Ahmad Dobi, were picked up at the Kripalpora national highway road. A CRPF patrol party stopped near them as they were pushing their car on the road and abducted them. They were taken to the Matches Factory, Baramulla.

On 22 August 1990 Ghulam Mohammad Lone's dead body was brought by the Baramulla Police Station to the Pattan Police Station. At 2:30 pm the body was handed over to the family of Ghulam Mohammad Lone. Mohammad Ayoub Khan, Parvez Ahmad Bhat, Farooq Ahmad Dobi were released after three weeks. All of them had been tortured. They confirmed that they were all taken to the Matches Factory where the CRPF was camped. They were tortured separately and heard the cries of Ghulam Mohammad Lone till 2:00 am on the night of 21 August 1990.

The brother of Ghulam Mohammad Lone is not sure of

the name of the officer responsible for the crime, but according to him the officer was infamous in the area.

The family of Ghulam Mohammad Lone gave a statement to the IPTK on 15 December 2011.

First Information Report [FIR] no.210/1990 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Baramulla Police Station⁵ on 22 August 1990. The 22 May 2012 communication from the Jammu and Kashmir Police states that the case was closed by declaring the perpetrators as untraced. A separate RTI was filed regarding all FIRs against State forces. By communication dated 25 December 2013 from the Jammu and Kashmir Police a copy of FIR was provided and information that the case was closed on 5 January 2001. The FIR, filed by the 46th Battalion CRPF, states that Ghulam Mohammad Lone was arrested and taken into custody on 20 August 1990. Two anti-personal mines were recovered from his body. On 21 August 1990 when he was being escorted to the toilet he pushed aside the sentry guarding him and tried to escape. While running he struck an obstacle and fell down and he was overpowered by the sentry. During the scuffle with the sentry he became unconscious and died.

According to a police report on record the post-mortem report was carried out by Medical Officer, Baramulla, Dr. A.R.Wani and vide his report dated 22 August 1990 it was confirmed that the apparent cause of death as severe beating resulting in blood loss and electric burns leading to shock cardio-respiratory arrest.

Also on record is a letter from the Deputy Commissioner, Baramulla to the Divisional Commissioner, Kashmir that refers to a report from the Superintendent of Police [SP], Baramulla. This report states that the 46th Battalion CRPF handed over the dead body of Ghulam Mohammad Lone and stated that Ghulam Mohammad Lone was lifted by them in a "suspected condition" but he tried to escape near the Matches Factory and while running he fell unconscious and died. Further, it was noted that the victim was not involved in unlawful activities.

The family of the victim was given Rs.1,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders].

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 in relation to this case that sanction was sought from the Ministry of Home Affairs but declined on 25 September 2000.

4 The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], on 6 September 2011 does not specifically name the alleged perpetrator for whom sanction for prosecution was sought.

5 Information on this FIR was sought through RTI on 7 October 2011. By communication dated 22 May 2012 from the Jammu and Kashmir Police a copy of the FIR and closure report was provided.

RTI was filed to the Home Department, Government of Jammu and Kashmir, on 7 May 2014 for information on cases against the CRPF where sanction for prosecution was sought. By communication dated 30 June 2014, the Jammu and Kashmir Police provided information that the victim was picked up from car no. "JKE/2786" "for questioning where he died due to torture". Further, that sanction for prosecution was declined, and the case was closed by declaring the perpetrators as untraced on "5 January 2014" but no final report was submitted before a court. By communication dated 26 March 2015, PIO, PHQ, Jammu and Kashmir, in its reply stated that the case was closed as untraced on 5 January 2001.

The text of the application of the 46th Battalion CRPF for the filing of the FIR by itself is an admission of the illegal detention and custodial death of Ghulam Mohammad Lone.

The post-mortem report belies exposes the lie of the CRPF regarding the circumstances of the death. In the context of the FIR, post-mortem report and testimonies of witnesses, the decline of sanction by the Ministry of Home Affairs is untenable and serves as an example of institutional support for crimes.

Further, the available documents do not suggest that even a court-martial was conducted in this case by the CRPF.

Finally, instead of further agitating the matter and conducting conclusive investigations the Jammu and Kashmir Police unfortunately has closed the case by declaring the perpetrators as untraced despite having clear evidence against the Commanding Officer of the 46th Battalion CRPF and his personnel. Further, they have chosen not to submit the final report before a competent court.

Case No. 5

Victim Details

Farooq Ahmad Mir [alias Imtiyaz] [Torture and Extra-judicial killing [Custodial killing]]
 Age: 20
 Occupation: Self-employed [owned a saw mill]
 Son of: Ghulam Mohammad Mir
 Resident of: [earlier resident of ChanKhan, Sopore, Baramulla district] Baba Raza, Sopore, Baramulla district

Alleged Perpetrators

1. Captain Raman Verma, 15 Grenadiers

Case Information

The father of the victim, Ghulam Mohammad Mir, stated that on 10 October 1990, the victim left his residence along with some other boys for the purpose

of joining militancy. They left at about 5 pm, planning to cross the Line of Control. Ghulam Mohammad Mir went to Kupwara to search for his son but he was unable to find him.

After about two weeks, someone handed over a slip to the president of the locality where he lived. This slip stated that the victim had been killed in Kupwara. On this information, Ghulam Mohammad Mir and his family went to the Kupwara Police Station to enquire about what had happened. They were asked to produce a photograph of the victim, which they did. The police then called the caretaker of the Kharbagh graveyard in Kupwara. The victim's photograph was shown to the caretaker who confirmed that the victim had been buried in the graveyard. The police informed the family that the victim had been buried in the 69th grave. The police personnel informed the family that the victim had been killed through torture. There were bullet marks on his body. He had been taken to the Papa-II Joint Interrogation Centre, in Srinagar, where he had died. The police refused the family's request to exhume the body.

Around seven years later, the family of the victim heard that the Government was offering relief to victims of violence. The family, to support their case, took the position that they had only recently heard about the death of their son. This is borne out by an unsigned, undated document with the family, which suggests that the victim had been kidnapped on 10 October 1990 and they heard of his death only seven years later. It appears that the "kidnapping" by "unknown" persons was also to accrue the relief and compensation. But, no relief or compensation was provided to them.

During this time, to process their case, the family also approached Dr. Saleem for the post-mortem report. He asked them their motivation for the report and they assured him it was only for seeking compensation. On record is a communication dated 1 May 1998 from the Chief Medical Officer, Kupwara to the Superintendent of Police, Kupwara. This communication states that the post-mortem report was only received on 1 May 1998 and was therefore being sent to the police. It appears that this is why the First Information Report [FIR] was filed on 27 June 1998. The police did not file a FIR on receiving information from the army. In fact, in 1990 itself, on receiving the information from the army, the police should have immediately filed a FIR for murder.

The father of the victim, Ghulam Mohammad Mir, gave the above statement to the IPTK on 8 April 2014.

The post-mortem report states that on 16 October 1990, Assistant Sub-Inspector of Police Ghulam Mohammad brought the body of the victim. The cause of death is as stated in the FIR. Further, initial examination on that day found that the victim had recent burn marks on his head and thighs. There was clotted blood in the nostrils. Burn marks were found

elsewhere. The post-mortem also states that the body was identified by a Major of the 15 Grenadiers.

The alleged perpetrator informed the police that it was an encounter. In fact, the information is also self-contradictory as the army, and the alleged perpetrator, also accepted that the victim was taken to a Joint Interrogation Centre in Srinagar.

FIR no.147/1998 under sections 302 [Murder], 364 [Kidnapping or abducting in order to murder] Ranbir Penal Code [RPC] dated 27 June 1998 at Kupwara Police Station.

The FIR, filed by Captain Raman Verma, states that the victim may have died due to injuries caused by “blunt trauma”. The FIR states that there was an encounter on 10 October 1990. The encounter was with anti-national elements. The ambush party arrested the victim after spotting him in Kanthanali village. On 14 October 1990, at 8:30 am, the victim was transferred from the custody of the army to the JIC, Srinagar, where he collapsed at 5 pm. He was declared dead on 15 October 1990 at 2:15 pm.

The above narrative, as described by the army, is reflected in the FIR alongwith the postmortem findings, which state that the victim died of a “cardiac pulmonary arrest” following massive blood loss in the abdominal cavity. The source of injury was to the right lobe of the liver, which could be caused by blunt trauma. The postmortem was conducted by Dr. Saleem.

There is also a reference in one of the FIR copies to another FIR, FIR no. 146/1998 at Police Station Kupwara. This may be the FIR filed by the army belatedly.

Information was sought through Right to Information [RTI] applications dated 15 October 2013 and 14 November 2014. In addition, RTI was filed on 18 December 2012 to Jammu and Kashmir Police regarding custodial killings in Jammu and Kashmir between 1989 and 2012. By communication dated 17 January 2013, information was provided that the case was closed as untraced on 14 October 1998. This was confirmed in RTI response 10 December 2014 though there the date of closure appears to be 4 October 1998. The information provided was that the “15 Grds” were involved but no name is identified. Copies of FIR were provided.

As stated above, the army has contradicted itself in their own FIR and it is clearly a case of custodial killing. Despite this, and while finding the involvement of the 15 Grenadiers, the police has chosen to close the case as “untraced” when atleast the name of the alleged perpetrator is present.

Case No. 6

Victim Details

Mohammad Ramzan Rather [Abduction and Extra-Judicial Killing (Custodial Killing)]
Son of: AbdulAhad Rather
Resident of: Kamad, Islamabad District

Alleged Perpetrators

1. Lieutenant Colonel M.M. Singh, 17 Jammu and Kashmir Rifles, Army

Case Information

First Information Report [FIR] no.127/1991 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Anantnag Police Station⁶. By communication dated 19 May 2012 from the Jammu and Kashmir Police information was provided that that the case was closed as chargesheeted against Lieutenant Colonel M.M. Singh and that the casefile was submitted for sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA]. A copy of the FIR was provided on 21 May 2012. The FIR states that on 29 March 1991 Mohammad Ramzan Rather was apprehended and then died in custody on the same day. He was said to be a militant of the Muslim Janbaz Force. By further communication dated 9 July 2012 from the Jammu and Kashmir Police, in addition to re-stating the information already provided, it was stated that while sanction for prosecution had been sought, no response had been received. By communication dated 16 November 2013 it was re-stated that the casefile had been sent for sanction. By communication dated 16 May 2014 from the Jammu and Kashmir Police information was provided that “The investigation of the case stands closed as challaned and CD file along with relevant records and evidence both oral and documentary stands submitted to GOI for accord of sanction and the same lies with the concerned sanctioning authority”.

By communication dated 18 December 2014 from the Jammu and Kashmir Police, it was stated that enclosed was a copy of letter under which the CD file had been sent for government sanction. The letter, dated December 1992, is from the Superintendent of Police [SP], Anantnag, to Inspector General of Police, Kashmir. This letter merely seeks that sanction for prosecution is sought. Further, the communication states that on 30 March 1991, a dead body, identified as Mohammad Ramzan Rather, was handed over the 17th Battalion of the Jammu and Kashmir Rifles stating that the individual was apprehended by the same unit on 29 March 1991 at Ashijipora Bridge and brought to

⁶ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

the unit headquarters. At the unit headquarters the victim started passing urine. The medical officer attended to him, but he became unconscious and was declared dead. The police then began investigations. A post-mortem was conducted and the medical opinion was that the victim died due to torture in custody. Section 161 [Examination of witnesses by police] Criminal Procedure Code, 1989 [CrPC] statements were taken, and site plan was prepared. The Jammu and Kashmir Rifles were requested to provide the nominal roll of officers who apprehended/interrogated the victim. This information was not provided. The alleged perpetrator was identified as the person on duty, and the commanding officer, at the relevant time. Based on the above, sanction was sought.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that it was not received.

It needs to be ascertained whether the Jammu and Kashmir Government has at all sent the case for sanction for prosecution to the Ministry of Defence and whether the Ministry of Defence has misplaced the case file. At least after the 2009 affidavit by the Ministry of Defence, the Jammu and Kashmir Government should have considered even re-sending the case or clarifying when and how the case was sent. The information provided by the police, communication dated December 1992, does not clarify whether sanction was finally sought or not.

In any case, after providing this information before the High Court of Jammu and Kashmir in 2009 and also in 1991 after the case was filed against the personnel of the army the Ministry of Defence seems to have cared very little about the Jammu and Kashmir Police investigations or in instituting a process for delivering justice. The available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 7

Victim Details

[Massacre/Extra-judicial killing]

22 killed and numerous injured

Alleged Perpetrators

1. Pandey, Deputy Superintendent of Police [DSP], 60th Battalion, Central Reserve Police Force [CRPF]
2. Sub Inspector [SI] Prem Singh, Picket/Bunker in-charge, 60th Battalion, Central Reserve Police Force [CRPF]

Allegations in Brief

A procession was moving towards the graveyard at Khanyar on 8 May 1991 at 4:30 pm. The procession comprised of men, women and children. The procession was to bury three persons in the Khanyar martyrs graveyard. Two among the three were militants and all were residents of Khanyar. At the sametime there was a patrol of 2nd Battalion CRPF that came by and they began firing on the procession. The personnel of 60th Battalion at a bunker on location also began firing. There was no provocation.

The above details, as recorded by the IPTK in statements, is also recorded in the First Information Report [FIR] No.41/1991 at Khanyar Police Station.

Further, on file are witness statements given to the Jammu and Kashmir police under Section 161 of the CrPC. In statement dated 10 May 1991, Ghulam Hassan, Selection Grade Constable, Jammu and Kashmir Police states that he was on location on 8 May 1991. Ghulam Mohammad, Constable, Abdul Ahad, Constable, Manzoor Ahmad, Constable, and Sub-Inspector Sajad were present. The witness says they were performing their duty. Three bodies were being brought for burial and it was 4:30 pm. At that time a patrol of CRPF, 2nd Battalion, Khalifapura, Khanyar, came by and reached near Dasteer Sahib graveyard. They saw the crowd of people. With no provocation they began firing on the people present. At the same location there was also a bunker with personnel of 60th battalion BSF and there was a DSP known as "Pandey". There was also a SI Prem Singh, picket/bunker in charge [who used to wear spectacles and was known for it]. They too began firing on these people. In this many people died and many were injured.

The same evidence was also provided in Section 161 statements of: Manzoor Ahmad, Head Constable, Jammu and Kashmir Police [10 May 1991], Nazir Ahmad, Constable [10 May 1991], Ghulam Mohammad, Constable [10 May 1991], Ghulam Mohammad, Constable [10 May 1991]. In addition, a Section 161 witness statement was given by Shabir Ahmad Bhat, son of Ghulam Rasool Bhat, resident of Khanyar, who says he can recognize the in-charge of the bunker of CRPF – he used to wear spectacles – and who used to come to the shop of the witness. The witness states that this person fired many shots which also injured the witness himself.

To date it appears that the police have carried out no effective investigations in this case. What is evidence though is that there is already evidence recorded in police statements that indicts the two alleged perpetrators. Further, the statement of Shabir Ahmad Bhat is important as it also highlights how delay aids the perpetrators of crime. If the police had completed investigations in 1991 itself, Shabir Ahmad Bhat would have been in a position to identify the alleged perpetrator – who appears to be alleged perpetrator 2 in this case.

Case No. 8Victim Details

Mohammad Ayoub Bhat [Extra-Judicial Killing (Custodial Killing)]

Son of: Assadullah Bhat

Resident of: Batwara, Srinagar

Occupation: Employee in 2 Field Ordnance Depot [FOD], Srinagar

Alleged Perpetrators

1. Colonel[Brigadier Retired] Gulshan Rai, 2 Field Ordnance Depot [FOD], Army
2. Major G.L.Yadav, Northern Command Liaison Unit [NCLU], Army

Case Information

Mohammad Ayoub was killed in custody on 21 June 1991.

First Information Report [FIR] no.55/1991 was filed at the Nishat Police Station⁷. The 21 December 2011 communication from the Jammu and Kashmir Police stated that the case was closed as chargesheeted against NCA authorities and sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] had been sought. By communication dated 30 November 2013 from the Jammu and Kashmir Police a copy of the status report was provided. By communication dated 22 April 2014 from the Jammu and Kashmir Police, letter dated 29 September 2008 was provided. This letter is a denial of sanction and was sent by the Ministry of Defence to the Home Department, Government of Jammu and Kashmir. This letter states that following investigations it was determined that the victim was found in “suspicious circumstances” near the water point, a restricted area, on 16 June 1991. On questioning he could not give proper explanation to the JCO. He was therefore brought to the office of Commanding Officer. As the individual could not justify his presence in Badamibagh Cantonment, the Commandant, 2 FOD [presumably alleged perpetrator 1] “in the best interest of security”, sent him to the “Interrogation Team North C/o 1 Detachment Northern Command Liaison Unit (NCLU) C/o 723 Int and FS unit for questioning”. The interrogation team questioned him on 17 June 1991 and allowed him to go at 17:30 hours on the same day on being found innocent. He was handed over to Inspector Sardar Khan, Station House Officer [SHO], Ram Munshi Bagh, Srinagar, who gave a written certificate to this effect. The Ministry of Defence states that there is a gap of “three days” between his release and his body found floating in the Dal lake.

The Ministry of Defence states that “there is thus a strong possibility of Late Mohammad Ayub Bhat having been abducted/killed by the militants after his release from Army”. Sanction for prosecution was therefore declined.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that sanction for prosecution was declined vide order dated 29 September 2008.

It is noteworthy that it took the Jammu and Kashmir Police, Government of Jammu and Kashmir and Ministry of Defence 17 years to investigate and process the case for acquiring sanction for prosecution under AFSPA [14 years to send the case] which apparently helped the perpetrators in evading justice. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

The reasons for denial of sanction do not completely absolve the alleged perpetrators. Firstly, neither of the alleged perpetrators are named while the decline of sanction document recounts the sequence of events. Therefore, presumably, alleged perpetrator 1 was the Commandant who handed over the victim to alleged perpetrator 2 for interrogation. Second, there are no details provided on the medical status of the victim when he was handed over to the police. Third, it appears that the victim was interrogated for possibly 24 hours – which is an extremely long duration. Fourth, and most importantly, the strongest defence of the alleged perpetrators would be Inspector Sardar Khan, who received the victim from army custody. If the victim was not tortured and/or hurt in any way, why did the police investigations find against the alleged perpetrators? Therefore, it appears very clear that despite a written certificate being provided, the police investigating the case clearly found against the alleged perpetrators.

Case No. 9Victim Details

Ghulam Hassan Malik [Torture, Extra-judicial killing]

Age: 35

Occupation: farming and shawl hawker

Son of Abdul Rahim Malik

Spouse: Asha Begum

Resident of Buran, Pattan, Baramulla District

Ghulam Mohammad Rather [Torture]

Son of: Ghulam Mohi-ud-din Rather,

Resident of: Buran, Pattan, Baramulla District

Alleged Perpetrators

⁷ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 21 December 2011 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

1. GS Wani, 2nd Lieutenant, 22 Grenadiers, Watergam Camp, Kreeri
2. Subhash Chander, Naib Subedar, 22 Grenadiers, Watergam Camp, Kreeri

Case Information

The wife and a relative of the victim Ghulam Hassan Malik, Mohammad Abdullah Mir, gave a statement to the IPTK on 20 March 2014. In addition, victim Ghulam Mohammad Rather also gave a statement to the IPTK on the same date.

The wife of the victim states that on a Friday in August 1991, at about 1 pm, Ghulam Hassan Malik left to meet his workers in Kreeri and Watergam area of Pattan as he had opened up a carpet weaving unit. On the way to Watergam in his own taxi, he was accompanied by: Ghulam Mohammad Rather, son of Ghulam Mohi-ud-din Rather, resident of Buran, Pattan [working for Ghulam Hassan], Ghulam Hassan Tantray, resident of Sherpora/Sripura, Pattan [carpet weaver for Ghulam Hassan], and Mohammad Akram Bhat, resident of Palpora [carpet weaver for Ghulam Hassan].

They were stopped at the Watergam camp at Kreeri. Before arriving there, the victim had withdrawn Rs. 1 lakh from the Jammu and Kashmir Bank, Pattan. He had to give the money to his workers. He also had three carpets in his vehicle, an ambassador, which he had also collected from his workers.

The following morning, Ghulam Mohammad Rather was brought to his house at Buran by the army for a search. One of the army officers was driving Ghulam Hassan Malik's taxi. This was seen by Ghulam Hassan Malik's sister, Zena. Zena then informed the wife of the victim. The army did not recover anything at Ghulam Mohammad Rather's house. Then the wife of the victim, along with other women, and the village head, Abdullah, went to the Zangam Nursery camp. The personnel of this camp knew her husband well as they sometimes bought shawls and carpets from him. The officer of the camp suggested that they go to the Hyderbaig camp. But, at the army camp they said they had not made any such arrest. Some women then informed them outside the Hyderbaig camp that Ghulam Hassan Malik had been brought to his house at Buran for searching. In fact, he had been brought home where his two sisters were present. The army had searched the house thoroughly but found nothing. When the army did not find anything, they had taken him into one of the rooms and tortured him for half an hour. Even his sisters had seen army personnel hitting him with gun butts on the back of his head. After half an hour of torture he was taken out of the house and then taken back. On the way back to the Watergam camp, the army took him to the orchards of the Bedar family near Pattan where he was once again tortured. The evening of the same day

his dead body was left in the Kreeri police post.

In the evening, the victim's wife's uncle – Mohammad Abdullah Mir – along with other villagers visited Kreeri police post. They were told to come the next day. Then, on Sunday morning, his dead body was brought to the village by a police truck. His body bore torture marks including multiple injuries on his abdomen, back, head and feet. The victim's hands had been burnt. The ambassador was in Kreeri police post.

After a few months, the family tried to get his ambassador from the police post for which the wife of the victim had to approach a judge in Baramulla where she narrated the whole incident. Then after some days the ambassador was returned. Also, Mohammad Abdullah Mir had filed a case against the army. But, after a few years the wife of the victim was called to Hamray camp, Pattan. There the army told her to withdraw the case. They threatened her by saying they would launch a crackdown in Buran and implicate her in a false case by putting a grenade or some ammunition in her pocket. Her father and village head were also questioned by the army that day.

Mohammad Abdullah Mir, in his statement, states that on 2 August 1991, a Friday, Ghulam Hassan Malik was arrested by the army, 22 Grenadiers, along with Ghulam Mohammad Rather, Mohammad Akram, and Ghulam Hassan Tantray, all of whom were working for him. On 3 August, the wife of the victim came to his house and informed him about the abduction. He then went to Hyderbaig camp to ascertain what had happened and at about 5 pm they came to know that the victim had been arrested by personnel of the Watergam camp. During the day, the victim had been brought to his own house by troopers of the Watergam camp. They searched the house and ransacked everything. After Abdullah Mir heard this, he rushed towards Kreeri and planned to head to the Watergam camp. But, on the way he met Station House Officer [SHO] Police Station Pattan and a doctor, Mohammad Afzal of Navlori. They informed him that the victim was in the Watergam camp but they suggested that he not go to the camp as it was late in the day. The next day, early in the morning, he went along with the victim's brother – late Abdul Jabar went to Kreeri. As soon as they reached the Kreeri bus stand he came to know that the victim's body was in the Kreeri hospital. Then sometime later, the police brought a vehicle and carried the dead body to Buran to his village. The army had lodged a FIR with the Baramulla Police Station. One of the official documents present with the family states that the security forces picked up the victim on 1 August 1991 and on 3 August 1991 personnel of the Police Station Pattan along with personnel of police post Kreeri handed over the body to his heirs who buried it in their native graveyard. After 5-6 years of the incident, wife of the victim, Asha Begum, Ghulam Mohammad Rather, Abdul Jabar, his nephew Shafi, Akram Bhat, Ghulam Hassan Tantray and others were taken to the Brigade Headquarters Hyderbaig. They

were taken forcibly in an army vehicle without any prior communication. Inside the camp, there was a top ranked official of the army, M.Y. Jaitley who had come from the Badami Bagh Cantonment. For the whole day, he questioned everyone one by one. It was about 10-20 minutes questioning for each person. Abdullah Mir was the last person questioned. The Officer asked him to sign a document. He refused. But he was told that he had to sign otherwise he would have to face consequences. No question was asked of him. He then signed the document. After Asha was questioned she came out and said she had been threatened of a false case of militancy. Everyone was made to sign the document. When Abdullah Mir signed he wrote a line that he had signed under pressure. The witness states that Asha may have wrongly thought this happened at the Hamray camp as it was her first visit to a camp. An army officer who was a friend of the witness once told him that he could help process the case but he told him that the army had already forcibly taken signatures from them. He remembers that a person called Nathu Singh Havaladar was responsible for the killing of the victim.

Ghulam Mohammad Rather, states that on 2 August 1991 they were returning from Kreeri. He was weaving carpets for Ghulam Hassan Malik and on Friday he used to take him along as he was skilled in weaving. Ghulam Hassan had to meet his workers in the Kreeri area. After meeting some workers he, Ghulam Hassan, Ghulam Hassan Tantray and Mohammad Akram Bhat were returning in the ambassador taxi of Ghulam Hassan. On the way back they were stopped at Thendum, Watergam checkpost which was about 1 km from Watergam camp. The army personnel asked for identity cards. After checking the cards they talked to someone on the phone and then they took them to the Watergam camp. They were kept separately in the compound. Then he was taken into one of the rooms of the camp. They told him he was a militant but he denied any connection with militancy and said he was a carpet weaver. Then they started to beat him with bamboo sticks. They asked him to surrender his ammunition but he pleaded innocence. He was beaten for a few hours. At 4 am they took him to his house for a raid. He showed them his carpet weaving tools. They asked for weapons. He said he did not have any. They then beat him again. They searched his house and took him back to the camp at watergam. He was detained for 7 days. He was occasionally tortured by the army. On the third day, while being questioned, they told him that Ghulam Hassan Malik had surrendered his ammunition and been released. But he answered that neither Ghulam Hassan Malik nor he were militants. After 2-3 days he was shifted to HMT Shariefabad camp. Ghulam Hassan Tantray was also shifted there and they were taken in the same vehicle. He was detained there for a few more days. There he was tortured again but he always pleaded his innocence. Then after a few days he was shifted back to Watergam camp. Then the next day he was handed over to Police Station Pattan from where he was released. Then he found out that Ghulam Hassan

Malik had been killed in custody. Due to the torture he had a disc problem in his back. He got operated in Maharashtra in 1996/1995. He sold a kanal of land and used that for treatment. He was crippled after the torture and he was not able to work. Then in 1997 his father opened a fabric shop at Pattan market. He continues to work there. He still has a problem in his back bone and cannot do any casual work. He remembers that about 8-10 years back he was called to the Hyderbaig army camp. He remembers Kashmir being under PDP rule then. Ghulam Hassan Malik's nephew, Mohammad Shafi was also called along with village headman, Abdul Ahad Bhat. He was questioned by a top ranking army official about the incident. They were questioned one by one. The questioning was for about 10-15 minutes. He doesn't remember whether he was made to sign any document. The army contacted the Mukhdam and then they were all taken to the camp in an army vehicle. Abdul Jabbar, the victim's brother was also taken. He is now dead. No medical assistance was given during his detention. He did not pursue any legal remedies due to fear.

The family of victim Ghulam Hassan Malik received Rs.1 lakh ex-gratia relief and Rs. 4 lakhs in lieu of Statutory Rules and Orders [SRO43] [compassionate employment] in 2013.

FIR no.191/1991 u/s 302 [murder] Ranbir Penal Code [RPC] was filed at Baramulla Police Station. The FIR was filed on 5 August 1991.

By communication dated 26 December 2013 in response to a RTI on custodial killings in Jammu and Kashmir, the information regarding the two alleged perpetrators was provided and a copy of the FIR was provided. Further information on this FIR was sought through RTI dated 14 November 2014. A separate RTI was filed regarding all FIRs filed against state forces in Jammu and Kashmir. By communication dated 25 December 2013 information was provided that this case was chargesheeted on 28 June 1993.

The witness statements are clear and indict the army in the abduction, torture and killing of victim no.1. Further, it appears that the police have also found against the alleged perpetrators. Despite this, no prosecution appears to have taken place and neither has the army conducted a court-martial.

Case No. 10

Victim Details

Mohammad Maqbool Gachoo alias Farooq [Abduction, Torture and Extra-Judicial Killing (Custodial Killing)]

Age: 35

Son of: Ghulam Mustafa Gachoo

Resident of: Ashraf Mohalla, Dal, Rainawari, Srinagar

Alleged Perpetrators

1. Kuldeep Singh, 69th Battalion Border Security Force [BSF], Camp Naydyar

Case Information

On 30 December 1991 at about 10:00 am there was crackdown in the area. The inhabitants of the locality were taken out and lined up. The BSF personnel, from the Naydyar Camp, took Mohammad Maqbool Gachoo along with Ghulam Hassan Bhat, Showkat Ahmad Kanu, Mohammad Ismail Guchoo, Mohammad Yousuf Kantroo, Showkat Hussain Kantroo, Asadullah Ashraf, Ghulam Ahmad Ashraf and Gulzar Ahmad Ashraf. Some of the BSF personnel remained in the area and only left at about 5:00 pm. Subsequently, some of the persons picked up were released after having been injured in custody, but Mohammad Maqbool Gachoo was not.

On the following day, 31 December 1991, the police along with personnel of the BSF came to the house of Mohammad Maqbool Gachoo. The cousin of the victim, Mohammad Ibrahim Bhat, and his uncle, accompanied them to the Police Control Room at Batamaloo. Mohammad Ibrahim Bhat saw the body of Mohammad Maqbool Gachoo in a BSF van. The dead body of the victim bore torture marks. The body was moved to the police car. Mohammad Ibrahim Bhat questioned a Major of the BSF on why his cousin had been killed. He received no answer. Subsequently, about six days later, a Sikh person came to the house of Mohammad Ibrahim Bhat and took him to the BSF Headquarters where he was asked to withdraw the FIR. He refused.

In 2011, Mohammad Ibrahim Bhat and others were taken to a BSF Court of Inquiry at Panthachowk, Srinagar. While Mohammad Ibrahim Bhat, and his brother Ghulam Hassan Bhat, testified accurately on the events of 31 December 1994, the other persons did not. Mohammad Ibrahim Bhat states that a person named Adil Khan, represented himself as an advocate, and paid money to certain people to alter their testimony. He was in fact, according to Mohammad Ibrahim Bhat, an agent of the BSF. Adil Khan also told Mohammad Ibrahim Bhat to withdraw the allegations in return for financial and employment benefits. Mohammad Ibrahim Bhat refused. The family of Mohammad Maqbool Gachoo has no information on who killed the victim.

The family of Mohammad Maqbool Gachoo received Rs.1,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders].

The family of Mohammad Maqbool Gachoo gave a

statement to the IPTK on 27 February 2012.

First Information Report [FIR] no.75/1991 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Rainawari Police Station on 31 December 1991⁸. The 21 December 2011 communication from the Jammu and Kashmir Police stated that the investigation was closed as chargesheeted before the court on 4 November 2009. The copy of the incomplete chargesheet provided states it was filed on 3 November 2009. The chargesheet states that Mohammad Maqbool Gachoo was tortured to death in the custody of the 69th Battalion BSF. The police had tried to contact the BSF but they were informed by the BSF that a BSF enquiry would take action against the responsible perpetrator.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 in relation to this case that it was sent to the Ministry of Home Affairs on 29 August 2008 and sanction for prosecution of Kuldeep Singh of the 69th Battalion BSF was awaited.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir 17 years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

The IPTK sought information on 10 January 2012 on all inquiries and court-martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir. No information was provided.

Case No. 11

Victim Details

Mushtaq Ahmad Shora [Abduction, Torture and Extra-Judicial Killing (Custodial Killing)]

Age: 34

Son of: Ghulam Nabi Shora

Resident of: Karfali Mohalla, Srinagar

Alleged Perpetrators

1. Additional Director General [ADG] K.K.Verma, In-charge Hariniwas Interrogation Centre, Srinagar, Central Reserve Police Force [CRPF]
2. Commandant K.C.Sharma, 75th Battalion Border Security Force [BSF]
3. Deputy Commandant Rowhat, 75th Battalion Border Security Force [BSF]

⁸ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 21 December 2011 from the Jammu and Kashmir Police a copy of the FIR and incomplete chargesheet were provided.

Case Information

On 27 February 1992 there was a crackdown by the 75th Battalion BSF under the command of Commandant Sharma and Deputy Commandant Rowhat in the Karfali Mohalla, Srinagar.

Mushtaq Ahmad Shora along with others was taken away. The family of Mushtaq Ahmad Shora learnt that the victim was at the Hariniwas Interrogation Centre. Commandant Sharma allowed the family to meet with him. Mushtaq Ahmad Shora had been badly tortured and unable to move.

Subsequently, friends of Mushtaq Ahmad Shora met him at the army hospital. He was pleading and crying that the BSF had hurt him and that he would die.

The family of Mushtaq Ahmad Shora requested ADG KK Verma to allow the victim to be moved to a civilian hospital but this request was not accepted. Mushtaq Ahmad Shora died on 10 March 1992.

On 27 February 1992, an entry as Daily Diary no. 25 was made at the Shaheed Gunj Police Station. The entry states that the 75th Battalion of the BSF conducted a crackdown in Karfali Mohalla and the surrounding areas. An identification parade was conducted.

The BSF personnel abused a person which resulted in a protest by the people. The Deputy Commandant Rowhat fired two gun shots and caused injury to two persons. They were rushed to the hospital.

On 1 March 1992, an entry as Daily Diary no.12 was made at the Shaheed Gunj Police Station that stated that there was a protest on 1 March 1992 and the Police Station was informed of the crackdown by the 75th Battalion BSF on 27 February 1992 at the Karfali Mohalla, Srinagar and the abduction of Mushtaq Ahmad Shora and others. The persons arrested had not been released.

The death certificate issued by the army hospital attributed death due to acute renal failure. The post-mortem report confirms the torture of the victim and states that "the deceased has died of injuries to vital internal organs, Hemorrhage, shock of death due to having got pressed under a smooth, heavy object in prone position".

The family of the victim filed a petition, through the Peoples Union for Civil Liberties, before the High Court of Jammu and Kashmir [Service Writ Petition (SWP) 1242/1992]⁹.

Despite the confirmation of torture leading to the death of Mushtaq Ahmad Shora, and the Jammu and Kashmir Police being cognizant of the incident, the investigations seem to have led nowhere. In fact, it appears the Jammu and Kashmir did not even file a FIR, which was legally required to have been done.

Based on the available documents, particularly the 6 September 2011 Government of Jammu and Kashmir response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under AFSPA, no sanction for prosecution appears to have been sought in this case.

Case No. 12Victim Details

Sheikh Hamza [Abduction and Extra-Judicial Killing]
Son of: Sonauallah Sheikh
Resident of: Watergam, Rafiabad, Baramulla District

Alleged Perpetrators

1. Captain Gorpala Singh, 17 Jammu and Kashmir Light Infantry Rifles [JAKLI], Army
2. Subedar Charan Dass Singh, 17 Jammu and Kashmir Light Infantry Rifles [JAKLI], Army

Case Information

Sheikh Hamza and three persons, Ghulam Mohammad, son of Mukhta Dar, Zahoor Ahmad Bhat, son of Gul Bhat, Abdul Rajab, son of Wali Mohammad other persons were picked up on 7 April 1992. Subsequently Ghulam Mohammad, Zahoor Ahmad Bhat and Abdul Rajab were released. The family of Sheikh Hamza approached the Jammu and Kashmir Police to enquire into the whereabouts of the victim but apparently no action was taken.

First Information Report [FIR] no. 1/1994 u/s 344 [Wrongful confinement for ten or more days], 302 [Murder], 34 [Common intention] Ranbir Penal Code, 1989 [RPC] was filed at the Sopore Police Station on 1.1.1994¹⁰. The communication of 9 May 2012 states that the case was closed by declaring the perpetrators as untraced. By communication dated 9 January 2014 it was stated that the case was closed on 15 May 2012. By further communication dated 9 July 2012, a document was provided that states that sanction for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] was declined in this case.

The Ministry of Defence, in its affidavit before the High

9 Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. No information was provided. Information on this petition was sought again on 4 April 2014.

10 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By letter dated 9 May 2012 a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. By communication dated 9 January 2014 from the Jammu and Kashmir Police a copy of the FIR and closure report was provided. Further information sought through RTI dated 14 November 2014.

Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that the case had been received in July 2008 and was under consideration.

The Ministry of Defence, in response to an RTI on sanctions for prosecution under AFSPA, stated on 10 January 2012 in relation to this case that sanction was denied on 15 January 2010 and that: "individual was released after questioning. The FIR was lodged after 20 months from the date of operation. The individuals named in the complaint were never borne on the strength of the unit".

The Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction had been declined.

The wife of the victim gave a statement to the IPTK on 11 May 2014. In addition, Zahoor Ahmad gave an eye-witness account on 11 May 2014. He was Sheikh Mohammad Hamza's neighbor. On 7 April, 1992 at around 10:00 am, there was a crackdown in the village by the army. All the villagers were taken to an orchard, which was about half a kilometer from the village. The army had a list of people whose relatives were militants. After these villagers were identified, the army troopers blindfolded them, put bags over their heads, tied their hands and finally tied them to apple trees. While they were hanging from apple trees, the army kept questioning them about militants. Zahoor's brother, Sajjad was an over ground worker for militants. The army kept asking Zahoor about Sajjad. In the orchard, the army removed all their clothes and tied bags around their hips. They then put kerosene oil on the bags and put the bags on fire during questioning and put them off if they got information.

Till about midnight that day, these villagers were tied to trees and after that their ankles were tied with a rope and then they were dragged to Mohammad Yousuf Bhat's house. Hamza was taken into a room adjacent to that in which Zahoor Ahmed was kept. The army started torturing Hamza and Zahoor could hear Hamza's cries in the next room. After about ten minutes, an army vehicle was parked near the house. They could hear something being thrown into the vehicle, and figured out that the army probably had put Hamza in that vehicle. Two hours later, Zahoor Ahmed was taken into the same room, where Hamza had been tortured earlier. His head was dipped into a bucket with around 100 litres of water. After the first dip, Zahoor had said that he had information and would share it with them. As soon as they took his head out of the bucket, he pleaded for his innocence. The army dipped his head into the bucket again and then he fell unconscious. He regained consciousness in the morning, the next day. On the second day, the army put bags over their heads and finally on the third day, after the army had left the village, the village headman Mohammad Asadullah set him free and

removed the bag from his head.

After Hamza's disappearance, his family tried to search for him. His uncle went to Jammu to meet the core commander. After consultations with Major Ashok, the core commander conveyed to Hamza's uncle that Gurpal Singh was in charge of the crackdown and he was the one responsible for Hamza's death.

On the day of the crackdown, Gurpal Singh, caught Zahoor Ahmed near a school, pushed him into his army jeep and dropped him off at the Watergam Bus stand. He then picked up Majeed Malla, a hotel owner, from his Hotel and asked him about the whereabouts of Hamza. Majeed Malla informed him that Gurpal was at work (in the Water works division). Gurpal Singh then picked up Hamza and along with Zahoorahmed, was taken to the orchard.

After Hamza's death, Gurpal Singh became notorious in the area. He started harassing the people of Watergam village. He cut the body of Ashiq Hussain, a militant from Dangiwachha village, into pieces and threw them in the river. He had started teasing and staring at the women of the area as well. After Ashiq Hussain's father filed a case against Gurpal Singh, he was transferred from the area.

According to Zahoor Ahmed, the police never asked him about the torture that was inflicted upon him during the crackdown. His son, namely Sajad Bhat, aged 18, was shot in his right eye after Afzal Guru's hanging by members of 92 battalion CRPF stationed at Wovoora, Sopore.

While the FIR places the incident on 7 April 1992, the Ministry of Defence in both its 10 January 2012 and 2009 submissions incorrectly places the date of the incident as 7 July 1992 and 7 July 1999 respectively.

As per an order dated 6 May, 2000, from the Office of the District Magistrate Baramulla, (J&K), Sheikh Mohammad Hamza, is reasonably presumed to have been killed due to subversion on 7 April, 1992 and his dead body disposed off somewhere. In a letter dated 4 June, 2004, addressed to the Addl. Superintendent of Police, Sopore, by the Executive Magistrate, Watergam, a request is made for the issuance of a non-involvement certificate for the deceased to proceed the SRO 43 case of Mohammad Ashraf Sheikh, son of the deceased.

As per a letter dated 26 May, 2010, written by the Village Guard, Watergam, Rafiabab, it is stated that Sheikh Mohammad Hamza was not involved in any anti-governmental activity and was a law abiding person.

As per a letter dated 9 June, 2010, from the Police Station at Dangiwachha, addressed to the sub-divisional Police Officer, Sopore, it is stated that according to the verification conducted by the said police station, it has been found out that both the

applicant as well as the deceased have not been involved in any kind of subversive activities and there is nothing adverse against both the subjects as per the records of that police station.

The response of the Ministry of Defence confirms the abduction and custody by the army of Sheikh Hamza.

The arrest and the alleged subsequent release of Sheikh Hamza is not supported by documentary proof which renders the theory of release of the victim suspect. It is unreasonable for the Ministry of Defence to claim benefit from the delayed filing of the FIR particularly when the FIR itself notes that various attempts were made by the family of the victim to get a FIR filed earlier.

Based on the evidence on record, the burden to prove the non-involvement of the alleged perpetrators or the deployed army unit in the crime is upon the army and the Ministry of Defence. Specifically because the Ministry of Defence accepts the arrest without providing proof of release. Surprisingly, this decline of sanction led to the police disregarding its own investigations and hence closing the case by declaring the perpetrators as untraced.

Case No. 13

Victim Details

Abdul Rehman Ganaie [Torture, Extra-judicial killing]
Age: 35
Occupation: Farming
Son of: Habibullah Ganaie
Resident of: Ganaie Mohalla, Lolipura, Pattan, Baramulla district

Name: Mohammed Ramzan Ganaie [Torture]
Son of: Habibullah Ganaie
Resident of: Ganaie Mohalla, Lolipura, Pattan, Baramulla district

Alleged Perpetrators

1. Brigadier, Tapper Camp, Pattan [as of June 1992]
2. Suresh Kumar, Army Officer, Tapper Camp, Pattan
3. Qayoom Khan [Code name], Major, Wusan Khoi Camp
4. Kus Raj [unsure of exact name from FIR], Major Adjutant, "5 Guards"

Case Information

The family of the victim no. 1 gave the IPTK two separate statements on 21 March 2014. The first statement was from the wife of the victim no. 1. The second statement was from the brother of the victim no. 1, who was tortured as well during the same incident.

The wife of victim no. 1, Asha Begum, gave the below statement to the IPTK on 21 March 2014.

On 11 June 1992, a day before Eid, there was an IED blast at Lolipura Road [Gondbal] when an army vehicle was passing by at about 2 pm. After the blast, the army started to chase away people and there was a huge deployment of army personnel.

The victim no. 1 had, at that point, gone to work on the fields at Kenhwach. After the blast, however, he stopped work and returned home. He was in the compound of the house, and was putting grass on the roof of the cowshed. His sister-in-law was assisting him. At about 5 pm, the army entered the compound of the house, led by an Alsatian dog. The dog bit the right hand of Mohammed Ramzan Ganaie, the youngest brother of the victim no. 1. The interviewee believes that the dog bit his hand because Mohammed Ramzan had shaken hands with one of the militants responsible for the IED blast [and not washed it thereafter], the latter being his acquaintance from school.

The army personnel then took Mohammed Ramzan, another brother of the victim no. 1 – Ghulam Mohammed, and the victim no. 1's nephew Shabir Ahmad. They were kept together in the compound of the house.

The victim no. 1 witnessed the entire incident from the roof of the cowshed. Suddenly though, he too was sighted by the army, and then he and his other two brothers were taken inside the house. The three brothers were tortured inside their house from about 7 pm. They were tortured till about 10 pm. They were then taken to the Batpora army camp.

The following day, the family initially went to the army camp at Hamray, where they were informed that no one had been arrested. The wife of the victim no. 1 then proceeded to her maternal home at Pattan. On her way she saw an army jeep entering the premises of a police station. She then asked her father, Ghulam Mohi-ud-din Sofi to check with the police station. Ghulam Mohi-ud-din Sofi went to the Pattan Police Station and he was informed that the victim no. 1 had died in army custody. The dead body was at the police station and from there it was sent to the Sub-district hospital, Pattan. The wife of the victim no. 1 went to the hospital and tried to enter and see the body but the army personnel present there prevented her from doing so. Then at about 2 pm the police brought his body to the village. He was buried shortly thereafter in the native graveyard.

Meanwhile, Ghulam Mohammad and Mohammad Ramzan [brothers of the victim no. 1] continued in army custody for many days before being released. They were detained for about 17 days. They were tortured severely. They were taken from the Batpora camp to the Hyderbaig camp. They informed the family upon their release that they had heard the shrieks of the victim no. 1 till dawn after which the cries ceased.

The victim no. 1 was unable to speak Urdu or Hindi, whereas his brothers could. The wife of the victim no. 1 believes that his inability to answer questions relating to the IED blast properly might have led to his killing. His brothers could speak Urdu, and therefore, they probably survived.

Neither the army nor the police troubled them after the killing.

The interviewee received ex-gratia relief of Rs. 1 lakh in 1998 and was also given a job appointment under Statutory Rules and Orders [SRO 43] [compassionate employment] as a class IV employee in the department of education.

The brother of victim no. 1, Mohammed Ramzan Ganaie, gave the above statement to the IPTK on 21 March 2014.

On 11 June 1992, there was an IED blast on the Lolipura road at an army convoy. After the blast, the army went berserk and started firing randomly. In this firing, Hilal Ahmad Mir, 11 years old, son of Sanaullah Mir, resident of Lolipura, was killed.

The army then reached the victim no. 1's house at about 4 pm. The army dog entered and bit Mohammed Ramzan's hand. Then he and Ghulam Mohammad [his brother] were taken inside the house, while the rest of the family was asked to move out. They were tortured inside. They were being asked to identify the militants who had carried out the blast. Ghulam Mohammad was given electric shocks on toes and he was dunked in a bucket of water.

Then victim no. 1 was also caught and taken to a nearby house, which belonged to Mohammad Ramzan Wani, who was a militant. No one else was in the house. He was tortured there. He was then taken to the house of Sanaullah Mir, who was linked to militancy, and he was tortured there too. He was beaten with guns, bamboo sticks and his head was dipped into a bucket of water.

Then all three of them were taken to Batpora camp at about 8 pm. They were all kept in separate tents. That night there was no more torture.

During the night, the interviewee could hear victim no. 1 call out for help. He also asked him if he was fine. The interviewee replied and said he was fine. The tents were close to each other and so they could hear one another. At about 4 am, during prayer time, victim no. 1 stopped calling out.

A doctor who came to treat the interviewee's injury told him that at about 7 am they heard that a person, who had been brought the night before, had died. He received 4 stitches on his head. This is when he realized that his brother had died. As a consequence

of his injuries, they were not questioned for 4 days. But 4 days later, they were shifted to the Hyderbaig camp, near the army cinema – Zorawar. There, the interviewee was first taken to the Brigadier and he was asked questions about the blast and his involvement in it. He told the Brigadier that he had shaken hands with a militant of Chandachama, who had come to his house asking for a glass of water prior to the blast.

He told the Brigadier that this might have been the reason why the army dog bit his hand. The Brigadier said he was lying. Mohammad Ramzan was then tortured the whole night. He was tied with a rope and kept hanging. They also lit a kerosene lantern and the whole room filled up with smoke. He was asked to disclose complete information on the blast. On the second day of his detention, an officer called him. He was blindfolded and taken to the officer, who asked him if he was a Muslim. He replied in the affirmative. The officer said that even he was a Muslim. He said his name was Hafiz Dar, but Mohammad Ramzan could see his nameplate bore the name Suresh Kumar.

On the following day, Suresh Kumar told his soldiers to not give Mohammad Ramzan food and also ordered them to hang him upside down. For the entire night, he was kept hanging. After that, he was not tortured. 17 days after being in custody, they were sent to Police Station at Pattan after being made to sign some documents. Army personnel dropped them at the police station. Major Qayoom Khan was probably present in the police station too.

The SHO then asked them whether he wanted to file a case or pursue an SRO 43 case. Mohammad Ramzan replied that they could not fight against the army, as they might file a false counter-case against him. The SHO then released them. The SRO 43 case was subsequently processed and victim no. 1's son received a job.

Mohammad Ramzan also stated that on the day of the blast, the cavalcade of army major, locally identified as Qayoom Khan, of Wusan Khoi Camp, came under attack. Further, Ghulam Mohammad was tortured inside the house, on the day of the blast, in front of Major Qayoom Khan. Major Qayoom Khan stopped army personnel from shooting Ghulam Mohammad and instead asked him to extract information.

In addition to the above testimonies, on file is FIR no. 86/1992 under section 302 [murder] Ranbir Penal Code [RPC] dated 13 June 1992 at Pattan police station filed by the army, specifically "Kus Raj", "Major Adjt 5th BN Brigade of the Guards". The army filed this FIR regarding the IED blast. The FIR recounts the IED blast and then states that the victim was detained at about 4:20 am and complained of chest pain immediately. Therefore, the FIR seeks to cancel out the numerous preceding hours of the death of the victim. A copy of the FIR with the victim's family has additional noting that states that the victim's

postmortem indicates injuries that can result in death due to a heart attack.

A separate was RTI filed for all FIRs in Jammu and Kashmir against the state forces. By communication dated 25 December 2013 a copy of the FIR was provided and information that the case was closed as untraced on 24 August 1992. Further that the force involved was 5 Grenadiers. But, in response to a RTI on all cases of custodial killings in Jammu and Kashmir, communication dated 26 December 2013 was provided that stated that the force involved was "5 Guards". Further information on the FIR was sought through RTI dated 14 November 2014.

While the above testimony and RTI related information confirms the killings, and the names of the alleged perpetrators, there is still uncertainty on the unit of the army involved. Further, the exact role of the Major Adjutant would have to be investigated further i.e. his role beyond the filing of the FIR.

Case No. 14

Victim Details

[Name and identifying information withheld on the request of the witness] [Extra-judicial killing]
Resident of: Budgam District

Alleged Perpetrators

1. PK Ray, Commanding Officer [Colonel], 2 Sikh Regiment

Case Information

At around 3 pm on 13 July 1992, an army convoy was passing through the location of the victim. It belonged to 2 Sikh regiment. PK Ray was their Commanding Officer [the witness is unaware of his actual rank]. The victim's family came to know about his name later.

At this time, a few militants were hiding in a graveyard. When the army convoy passed through, the militants, from the side of the road, hurled a grenade and it hit one of the army trucks. One person from the army probably died.

As the grenade exploded, the army entered the locality and retaliated by killing civil people in the locality. They entered the houses and fields, which were away from the road, and killed civilians there. Ten persons were killed and several got injured and one woman died of a heart attack.

After killing of these ten persons, a turbaned officer kept 15 persons in a line; the brother of the victim was one among them. The officer wanted to shoot them. One person among the 15 requested the army officer not to kill them and told him that they were not militants. The army officer pointed his gun towards them but

another army officer Mahajan pulled out his rifle and didn't allow the army officer to shoot. So, they were taken out on the street and were told to climb the electric pole and that whosoever would be a militant among them would get an electric shock and whoever was not, would not get an electric shock. One person was forced to climb the electric pole; he tried to climb but he slipped, so, the army beat him.

Four persons from the locality died that day and one woman had a heart attack. The six others who were killed were from another area in Budgam district. They were manual workers/carpenters working in a masjid. The brother of the victim, the witness, was also beaten, due to which he had to have surgery of his back.

After the incident, a crackdown was imposed in the village for four consecutive days. The father of the victim was also in the army. When the army came to know about this, the officer PK Ray approached their house. That is when they found his name out. PK. Ray told the family that he had made a mistake and requested their forgiveness. He said that if he were aware of the victim's parentage he would have not killed the victim.

Later, a few elders of the locality filed a First Information Report [FIR] in the Police Station against the army. But the army threatened them that they would be killed if they did not close the case. During the crackdown after the incident, the inhabitants of the locality said that the army stole gold and money from their houses.

The brother of the victim gave the above statement to the IPTK on 14 March 2015.

The exact role of the alleged perpetrator is uncertain though it is clear that he had knowledge of the killing based on the conversation he had with the family of the victim. The import of his statement that if he knew the parentage of the victim, the victim would not have been killed is uncertain and needs to be investigated. Certainly it appears that there has been no action in this case and the army did not even conduct a court-martial.

Case No. 15

Victim Details

Abdul Hameed Bhat [Extra-judicial killing]
Son of: Mohammad Shaban Bhat
Resident of: Khumina Baharabad, Hajin, Bandipora

Abdul Rashid Sheikh [Extra-judicial killing]

Alleged Perpetrators

1. Sharma, Officer, Border Security Force [BSF], Hajin Camp

Case Information

On 13 August 1992, the victim was about to travel for *Chilla* [a religious practice] for next forty days. On the same day, the sound of a gun echoed all over the village. The villagers heard that there were a few militants who were hiding in the paddy fields. Soon, Border Security Force personnel from Hajin Camp surrounded the entire area and announced a search operation. During this process, many civilians were arrested and almost everyone was tortured. The Border Security Force picked up Abdul Hameed Bhat along with a militant named Abdul Rashid Sheikh. They took them to an open space and tied them to a walnut tree. In the presence of hundreds of villagers, the Border Security Force opened gun fire on both and shot them dead. The interviewee counted around two-dozen bullets in the body of his brother. Later on, Sharma, a Border Security Force officer, tied both the dead bodies to his vehicle and dragged them around the whole village.

The brother of the victim, Fayaz Ahmad Bhat, gave the above statement to the IPTK on 22 May 2015.

The witness statement is clear, and cogent evidence is presented of the killing by the alleged perpetrator. The allegations warrant further investigation.

Case No. 16Victim Details

Bashir Ahmad Lone [Extra-Judicial Killing]
Occupation: Orderly, Office of Deputy Commissioner [DC], Baramulla
Son of: Ramzan Lone
Resident of: Ushuru, Baramulla District

Alleged Perpetrators

1. Assistant Commandant Kaanjoo Singh, 193rd Battalion Border Security Force [BSF]

Case Information

First Information Report [FIR] no. 253/1992 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Baramulla Police Station¹¹. The 22 May 2012 communication from the Jammu and Kashmir Police stated that the case had been chargesheeted. The chargesheet lists 13 witnesses. A separate RTI was filed regarding all FIRs against the State forces in Jammu and Kashmir. By communication dated 25 December 2013 from the Jammu and Kashmir Police a copy of the chargesheet and FIR was provided and information that the case was chargesheeted on 18 June 2000.

The FIR states that Bashir Ahmad Lone was shot dead while performing his official duties on 30 September 1992. The chargesheet states that the victim had gone to Kanil Bagh, Baramulla to visit Ghulam Mohi-ud-din. There he was caught and killed by the alleged perpetrator.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 in relation to this case that sanction was awaited.

It is unclear whether the Ministry of Home Affairs received this case for grant of sanction. But, it is clear that there has been an inordinate delay in this case as 20 years have passed without sanction being granted and prosecution conducted. Further, the available documents do not suggest that even a court-martial was conducted in this case by the BSF.

Case No. 17Victim Details

Charan Jeet Singh [Extra-Judicial Killing]
Son of: Nanak Singh
Resident of: Jammu

Alleged Perpetrators

1. Lance Naik [Lance Corporal] A.A. Khan, Central Reserve Police Force [CRPF]
2. Constable S.T. Kurian, Central Reserve Police Force [CRPF]

Case Information

Tata bus no. JKE 6076 and two bicycles were “burst” by the CRPF and Charan Jeet Singh died and others were injured.

First Information Report [FIR] no. 102/1992 u/s 302 [Murder] was filed. Information on this FIR and case [though the details of the Police Station are not available] was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011.

By communication dated 9 July 2012 from the Jammu and Kashmir Police, information was provided in the form of a letter dated 15 June 2012 from the Deputy Superintendent of Police, Headquarters, Srinagar that this FIR was scrutinized in the police stations of the Srinagar District and no case with this FIR number was found where sanction for prosecution had been declined.

11 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 22 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. By communication dated 30 November 2013 from Jammu and Kashmir Police a copy of the chargesheet was provided. By communication dated 22 April 2014 from Jammu and Kashmir Police a copy of the chargesheet was again provided.

The Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecutions under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 in relation to this case that the Ministry of Home Affairs declined sanction.

A case of 1992 still awaits justice as sanction for prosecution has been declined and the available documents do not suggest that even a court-martial was conducted in this case.

Case No. 18

Victim Details

Mehraj-ud-Din Baba [Extra-Judicial Killing (Custodial Killing)]

Age: 18

Occupation: 12th Standard student

Son of: Mohammad Abdulla Baba

Resident of: Shahi Mohalla, Awantabawan, Soura, Srinagar

Alleged Perpetrators

1. Sub-Inspector [SI] B.I. Singh or B. K. Singh [reportedly deceased]¹², 107th Battalion, Border Security Force [BSF]
2. Additional Director General [ADG], K.K. Verma, In-charge Fair View Guest House / Papa-II Interrogation Centre, Border Security Force [BSF], Srinagar
3. Inspector Raas Behari Dutta, Duty Sectional Officer, Fair View Guest House / Papa-II Interrogation Centre, Border Security Force [BSF], Srinagar

Case Information

On 23 December 1992, Mehraj-ud-Din Baba was tortured by personnel of the 107th Battalion BSF and this resulted in his death. Mehraj-ud-Din Baba was picked up at Ali Mardan Khan Bagh, while he was going to school. When the victim did not return home in the evening, his parents informed the local police station, but no action was taken. On 25 December 1992, BSF Sub-Inspector [SI] Gurbachan Singh handed over the body of the victim, bearing torture marks, to the Soura Police Station. The body had been received from the Fair View Guest House / Papa-II Interrogation Centre, Srinagar. The post-mortem report indicated that the death was due to injury in various organs of the body due to torture and fracture.

The family of Mehraj-ud-Din Baba gave a statement to the IPTK on 22 February 2012.

First Information Report [FIR] no. 260/1992 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Soura Police Station on 25 December 1992. The FIR states that on 25 December 1992¹³, SI Gurbachan Singh brought the body of the victim bearing torture marks. The 107th Battalion BSF had arrested the victim on 23 December 1992. The 7 August 2012 communication from the Jammu and Kashmir Police states that this case was closed as chargesheeted. Also provided was a letter dated 14 January 2008 from the Director General of Police [DGP], Jammu and Kashmir, to the Inspector General of Police [IGP], Kashmir that states that sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] was declined by the Ministry of Home Affairs against ADG K.K. Verma and Inspector Raas Behari Dutta. By communication dated 30 November 2013 from the Jammu and Kashmir Police it was stated that sanction for prosecution had been declined. By communication dated 22 April 2014 from the Jammu and Kashmir Police communication dated 14 January 2008 from Director General of Police [DGP] to Inspector General of Police [IGP], Kashmir was provided which intimated that the Ministry of Home Affairs had denied sanction for alleged perpetrators 2 and 3.

Also, on record is FIR no. 89/1992 u/s 302 [Murder], 307 [Attempt to murder] and 3(2) TADA and the Arms Act, 1959 at the Nowhatta Police Station which states that there was an encounter with militants on 24 December 1992, in which SI B.I. Singh was also injured and then he succumbed to his injured¹⁴. Inspector Shiv Kishore Singh was also injured. By communication dated 30 November 2013 the Jammu and Kashmir Police stated that a closure report was being provided. But, in fact, no documents were provided. By communication dated 22 April 2014 from the Jammu and Kashmir Police information was provided that the closure report had not been submitted yet, and only a copy of the FIR was provided. There is a noting on the FIR that states that investigations had been closed by declaring the perpetrators as untraced but the final report was awaited.

The family of the victim filed a petition before the High Court of Jammu and Kashmir [habeas corpus petition, HCP 287/1993] seeking the completion of investigations. In October 1994, Station House Officer [SHO] of Soura Police Station stated that investigations were ongoing. It was stated that the

12 There appear to be minor discrepancies in the names of the perpetrators, particularly the first alleged perpetrator: while the family refers to him as B.I. Singh, the Government of Jammu and Kashmir and police refer to him as B.K. Singh and also as B.I. Singh. The death of this person was confirmed before the High Court, but the family has stated that it requires further proof of the same.

13 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. By communication dated 7 August 2012 from the Jammu and Kashmir Police, a copy of the FIR and internal correspondence of the police was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

14 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 15 October 2013.

body of the victim was received from the BSF and it had been stated by the BSF that the victim was a Hizbul Mujahideen militant. The SHO had sought information from the 107th Battalion BSF but had received no response. In the meantime, the 107th Battalion BSF had been transferred from the Kashmir valley and the investigations had now been taken up with the 84th Battalion BSF which had replaced the 107th Battalion. On 29 June 1995, the High Court passed a strong order that investigations be completed in four months and that the police use all available powers to do so. Subsequently the court was informed that SI B.K.Singh had been found involved in the crime and his whereabouts were being traced. In December 1995, the court was informed that SI B.K.Singh had died in an encounter and FIR no. 89/1992 at the Nowhatta Police Station had been filed. On 22 October 1996, the High Court strongly criticised the role of the police in investigations and also stated that the role of other persons in the BSF responsible for the crime should also be ascertained. Eight years later, in November 2004, the Government of Jammu and Kashmir submitted before the High Court that the alleged perpetrators were responsible for the crime. Further, that SI B.I.Singh was dead, ADG K.K.Verma had retired from service and Inspector Raas Behari Dutta was serving at the Sector Headquarters, BSF, Kishan Ganj, North Bengal. Appended was a 19 January 2004 letter from the SHO, Soura Police Station that confirmed the names of the three alleged perpetrators, and stated that a chargesheet had been filed, that sanction for prosecution under AFSPA was required to be sought and that the three persons must be arrested. On 30 November 2004 the High Court issued its final decision, found that there was prima facie evidence against the alleged perpetrators, and stated that sanction for prosecution should be sought.

The family of the victim filed a contempt petition [no.1/2007] on the issue of delay in seeking the sanction for prosecution under AFSPA. During the proceedings, a letter from the Ministry of Home Affairs dated 12 November 2007 to the Jammu and Kashmir Home Department, was produced which declined sanction for ADG K.K.Verma and Inspector Raas Behari Dutta. Following this, and in light of another petition being filed against the denial of sanction, and seeking investigations as to whether SI B.I.Singh was indeed dead [HCP167/2008], the contempt petition was not pressed and was dismissed on 29 September 2009. Also brought on record was the denial of sanction by the Ministry of Home Affairs on 12 November 2007 that stated that there was no evidence against ADG K.K.Verma and Inspector Raas Behari Dutta.

HCP167/2008 was filed against the denial of sanction and also sought that investigations be carried out on whether SI B.K.Singh was indeed killed in an encounter.

In response to HCP167/2008, the BSF stated that while the victim was not arrested by the three alleged perpetrators, he was arrested by the BSF on grounds of him being an active militant. The BSF also stated that the victim was questioned by SI B. K. Singh at the "Far View Guest House" at about 5:30 pm and in the evening he was put into a cell in Fair View Guest House / Papa-II Interrogation Centre where he complained of chest pain. On reaching the hospital, he was declared as having been brought dead.

Further, the BSF states that "Ras Bihari Dutta" was "responsible for the security of Far View Guest House" but had no role in the incident. Further, that K. K. Verma only "visited the spot". The petition remains pending. But, the High Court directed that the question of sanction be re-considered on 20 February 2014. By communication dated 27 August 2014 [as provided by Jammu and Kashmir police in response to RTI on 23 January 2015] the Ministry of Home Affairs once again declined sanction. It was stated that there was no fresh evidence, PAPA-II was an additional police lock up/police station as designation by the government of Jammu and Kashmir and therefore BSF did not do anything illegal by detaining the victim there. The involvement of the accused in the crime was not found.

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. Information was provided.

Also on record is a letter dated 7 May 1993 from the Superintendent of Police [SP], Srinagar, to the Deputy Commissioner, Srinagar confirming that the victim was not involved in any subversive activities.

The family of the victim received Rs.1,00,00 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders].

As a preliminary point, it must be noted that a case in which an FIR was filed in 1992, the High Court passed an order to seek sanction in 2004 and the sanction was denied in 2007. Further, to date, it appears the perpetrators of the crime have yet to be punished.

Further, the 19 January 2004 letter of the SHO of Soura Police Station is curious as while it confirms that a chargesheet had been filed against the three accused, it states that the three accused "may kindly be made available in police station". Notwithstanding the negligence of the police authorities, it seems a clear position of the Government of Jammu and Kashmir that the three alleged perpetrators were responsible for the crime.

In the face of the police investigations, the position of the BSF, denying the role of all three officers in the killing of the victim, would appear prima facie untenable. This was also a position supported by the

High Court which found that the entire team responsible for the arrest and detention of the victim must be held responsible.

The role of SI B.I. Singh in the incident is beyond doubt. The control that the other two alleged perpetrators had over the Fair View Guest House is also beyond doubt. Therefore, the denial of sanction [for the second time] by the Ministry of Home Affairs on grounds of lack of evidence is clearly unfortunate as a court process would have certainly helped ascertain the truth. Finally, considering that the victim was found not to be involved in any subversive activities, the very arrest of the victim could be argued to have been illegal.

The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir but no information was provided. Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Case No. 19

Victim Details

[Massacre/Extra-judicial killing]
[46 victims as listed below]

Bashir Ahmad Khanday
Son of: Abdul Rehman Khanday
Resident of: Qamarwari, Srinagar

Javed Ahmad Bhat
Son of: Ahad Bhat
Resident of: Sangrampora

Basir Ahmed Wani
Son of: Ghulam Hassam Wani
Resident of: Indergam, Pattan

Abdul Rashi Sofi
Son of: Jabbar Sofi
Resident of: Wantagam, Bandipora

Mohammad Ashraf Wani
Son of: Ghulam Hassan Wani
Resident of: Khankah Mohalla, Sopore

Mohammad Sadiq
Son of: Rafi Mohammad
Resident of: Himachal Pradesh, presently Badamibagh, Sopore

Ghulam Mohammad War
Son of: Mohammad Sultan War
Resident of: Tujjar Sharief, Sopore

Nazir Ahmad War
Son of: Ghulam Mohammad War
Resident of: Tujjar Sharief, Sopore

Ghulam Nabi Zargar
Son of: Ghulam Qadir Zargar
Resident of: Badamibagh, Sopore

Mohammad Ayub Bulaki
Son of: Khazir Mohammad Bulaki
Resident of: Sangrampora, Sopore

Mohammad Sultan Lone
Son of: Kabir Lone
Resident of: Kupwara

Ghulam Mohiddin Wani
Son of: Asad
Resident of: Bandipora

Mohammad Ashraf Kangoo
Son of: Ghulam Hassan Kangoo
Resident of: Khankah Mohalla, Sopore

Mohammad Asaf Ganai
Son of: Mohammad Maqbool Ganai
Resident of: Hindwara, Jama Jadzergar Mohalla, Noor Bagh, Sopore

Ghulam Mohammad Sheikh
Son of: Jabbar Sheikh
Resident of: Kharanksong colony, Sopore

Mohammad Ismail Bhat
Son of: Ama Bhat / Dar
Resident of: Maharajpura, Sopore

Mohammad Maqbool Dar
Son of: Abdul Karim
Resident of: Muslim Peer, Sopore

Mohammad Sahwan Ganai
Son of: Subhan Ganai
Resident of: Chakipora, Sopore

Dilawar Khan
Son of: Abdul Samad Khan
Resident of: Mandji, Sopore

Sunallah Rather
Son of: Alad Rather
Resident of: Sonawari, Shahgond

Abdul Majeed Gadoo
Son of: Ghulam-ud-din Gadoo
Resident of: Baba Raza Sahab, Sopore

Altaf Ahmad Ganai
Son of: Ghulam Rasool Ganai
Resident of: Krankavisiwan colony, near Shaheen photographer, Sopore.

Mohammad Ashraf Shalla
Son of: Maqbool Shalla
Resident of: Shallapora, Sopore

Ghulam Rasool Sofi
Son of: Mohammad Sultan Sofi
Resident of: Ashpora, Rangpat, Handwara

Farooq Ahmad Banday
Son of: Abdul Rasheed
Resident of: Sangrampora, Sopore

Habibullah Mir
Son of: Hamza Mir
Resident of: Kashmir Maragi Cooperative Bank,
Sopore

Abdul Khaliq Malik
Son of: Ghulam Mohi-ud-din Malik
Resident of: Arampora, Sopore

Ghulam Rasool Shalla
Son of: Mohammad Shaban Shalla
Resident of: Shallapora, Sopore

Sajad Ahmad Shalla
Son of: Abdul Razak Shalla
Resident of: Shallapora, Sopore

Ghulam Nabi Bhat
Son of: Abdulla Bhat
Resident of: Khaja Gilet, Sopore

Abdul Rajak Chalkoo
Son of: Ghulam Mohammad Chalkool
Resident of: Bemina, Srinagar

Ghulam Rasool Hazam
Son of: Gulla Hazam
Resident of: Hazama, Sopore

Gulzar Ahmed Sheikh
Son of: Mohammad Abdulla Sheikh
Resident of: Shahabad, Sopore

Basir Ahmad Shalla
Son of: Ghulam Mohammad Shalla
Resident of: Shallapora, Sopore

Mohammad Saidula Paray
Son of: Rahat Paray
Resident of: Adipore, Sopore

Ghulam Rasool Shalla
Son of: Haji Subhan Shalla
Resident of: Salapora, Sopore

Misra Begum
Wife of: Assadullah
Resident of: Khush Mohalla, Hathlangoo

Abdul Ahad Kanjwal
Son of: Mohammad Subhan Kanjwal
Resident of: Muslim Peer, Sopore

Abdul Raseed War
Son of: Gulla Mohammad War
Resident of: Tujjar Sharief, Sopore

Jawad Ahmad Dar
Son of: Abdul Salam
Resident of: Hathisha Colony, Sopore

Mohammad Hussain Mir
Son of: Ghulam Mohiuddin Mir
Resident of: Toheetgung, Baramulla

Abdul Majeed [Hameed] Sofi
Son of: Ghulam Mohiuddin
Resident of: Nagin Bagh, Kraknsiwan colony,
Sopore

Ghulam Mohammad Wani
Son of: Abdul Khaliq Wani
Resident of: Iqbal Nagar, Sopore

Zahoor Ahmad Khan
Son of: Mohammad Shafi Khan
Resident of: Shalpora, Sopore

Mohammad Asraf Mir
Son of: Kadar Mir
Resident of: Ashapir, Sopore

Nisar Ahmad Sheikh
Son of: Wani Mohammad Sheikh
Resident of: Umarabad Colony, Baramulla

Alleged Perpetrators

1. RS Jasrotia, Deputy Inspector General [DIG], Border Security Force [BSF], Sector Baramulla,
2. Commandant S. Thangappan, 94th Battalion, Border Security Force [BSF]
3. Assistant Commandant Ashok Yadav, 94th Battalion, Border Security Force [BSF]
4. Assistant Commandant Prakash Singh, 94th Battalion, Border Security Force [BSF]
5. Assistant Commandant Balwant Bhaskar Joshi, 94th Battalion, Border Security Force [BSF]
6. Inspector Ram Saran Singh, 94th Battalion, Border Security Force [BSF]
7. Deputy Commandant Jaideo Singh, 94th Battalion, Border Security Force [BSF]
8. Assistant Commandant Kartar Singh Saroha, 94th Battalion, Border Security Force [BSF]
9. Platoon Commander Inspector BS Rawat, 94th Battalion, Border Security Force [BSF]
10. Inspector Gurcharan Singh, 94th Battalion, Border Security Force [BSF]
11. Inspector Ajaib Singh, 94th Battalion, Border Security Force [BSF]
12. Assistant Commandant MN Sajjan, 94th Battalion, Border Security Force [BSF]

Case Information

6 January 1993.

Read Chapter 2: Theatres' of Violence-part B relating to the Sopore Massacre.

Case No. 20Victim Details

Ashiq Hussain Ganai [Abduction and Extra-Judicial Killing (Custodial Killing)]

Age: 24

Son of: Ghulam Rasool Ganai

Resident of: Dangiwacha, Rafiabad, Baramulla District

Alleged Perpetrators

1. Major Ashok Kumar, 17 Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Watergam
2. Major Inder Verma, Army
3. Major Gurpal Singh, In-charge, 17 Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Chatoosa

Case Information

On 3 March 1993, Ashiq Hussain had gone to the mosque for morning prayers. In the meantime there was a crackdown in Dangiwacha, which was headed by Major Inder Verma. All the villagers were called to the playground for an identification parade. During the parade, Ashiq Hussain was picked up and was taken to the Chatoosa Army Camp at Rafiabad, which was then headed by Major Gurpal Singh. The entire village witnessed the parade. Ashiq's family informed the Police Station at Panzalla. They also went to the Army Headquarters at Baramulla, but couldn't find out anything. Next, they went to the Chatoosa Army Camp and met Major Gurpal Singh. However he refused to give them permission to meet Ashiq. His family kept visiting the army camp, with a hope of meeting Ashiq. But Major Gurpal Singh refused each time.

After more than a week, Major Inder Kumar issued a release order for the release of twelve persons, who were in army custody. All the persons named in the order were released, except for Ashiq Hussain, which resulted in protests in the village. His family approached the Deputy Commissioner's office and some police officials as well, for his release, but all in vain. His father also met the then Governor of Jammu and Kashmir, but it didn't help, Ashiq was still in custody at Chatoosa.

Four days after Ashiq's arrest, Major Gurpal Singh raided his house and asked for ammunition. Their house was raided again by Major Ashok Kumar of 17 JAKLI camped at Watergam, who asked all his family members to step out of the house and then took them to the outskirts of the village. Major Ashok Kumar told his father that Ashiq has been released and to sign on a blank sheet of paper. He further said that in case he didn't sign the papers, he would implicate his son,

Naseer in a false militancy case. Under compulsion, Ashiq's father signed the papers. Major Ashok's men also fired in the air, to threaten Ashiq's family. The next day, Ashiq's father reported the incident to the police as well as the media. He was threatened by the army officers in the area for pursuing the case.

Sopore College remained closed for a couple of days and students protested for his release. On 12th April, Ashiq's dead body was recovered from the Jehlum River at Doabgarh, Sopore. After identification, the police handed over the body to the family. They later added that they had found injuries, and marks all over his body. Major Gurpal Singh, was then transferred from the area.

The family hasn't accepted any compensation but have been pushing for the prosecution of the guilty officers.

The younger brother of the victim gave the above statement to IPTK on 27 May 2014.

First Information Report [FIR] no. 18/1993 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Panzalla Police Station¹⁵ on 12 April 1993. The 22 May 2012 communication of the Jammu and Kashmir Police stated that the case was under investigation.

The family of Ashiq Hussain Ganai filed a petition before the High Court of Jammu and Kashmir in 1993 [Original Writ Petition (OWP) 1592/1993¹⁶]. Station House Officer [SHO], Panzalla Police Station, on 30 July 1996 informed the High Court that the investigations had been completed on 7 August 1993 and the case was sent to the Jammu and Kashmir Home Department, for obtaining sanction for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] from the Ministry of Defence. Later, the Jammu and Kashmir Home Department, appears to have forwarded the case to the Ministry of Defence on 24 March 1995.

On 7 May 1997, the High Court was informed by the Additional Advocate General, B.M. Sadiq, that the case file had been sent to the Ministry of Home Affairs, which had in turn sought a clarification from the Jammu and Kashmir Home Department. For this clarification, the case file had been sent to the Director General of Police [DGP], Jammu and Kashmir. On 6 May 1998, the High Court was informed that sanction for prosecution for Major Ashok Kumar and Major Gurpal Singh was denied by letter dated 19 March 1997 from the Ministry of Defence.

The Union of India and Major Gurpal Singh admitted in their submissions to the High Court that Ashiq Hussain Ganai was apprehended on 3 March 1993 and then

15 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 22 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

16 Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Information was provided.

taken to the Watergam Camp. Ashiq Hussain Ganai was then moved to the Chatoosa Camp on 11 March 1993. Further, Ashiq Hussain Ganai's house was subsequently searched based on information from him that his brother was in possession of a pistol. The allegation in the petition of signatures of the family of the victim being taken on blank papers was denied. It was stated that the victim escaped during an ambush on the army convoy on 23 March 1993. It was also stated that a Court of Inquiry was conducted vide HQ 79 Mountain Brigade convening order no. 113/1/GS(1) dated 25 March 1993 wherein it was established that the army personnel were not involved in the death of the victim. On 14 May 1999 the High Court allowed an amended petition to be filed to include the prayer that the denial of sanction for prosecution be quashed. The most recent order on record is of 20 November 2006 where the High Court granted further time for the filing of counter-objections to the amended petition.

The State Human Rights Commission [SHRC] was also approached. A final decision was given on 25 August 1999.

The Ministry of Defence, in its affidavit before the High Court in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that it was not received. The Government of Jammu and Kashmir, in response to information sought under the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that the case was sent to the Ministry of Home Affairs but sanction was not being recommended. The sanction process appears to have only been initiated for Major Ashok Kumar and Major Gurpal Singh.

The record of the case displays that both the Additional Advocate General of the Government of Jammu and Kashmir and the Government of Jammu and Kashmir itself mistakenly refer to the request for sanction for prosecution under AFSPA being sent to the Ministry of Home Affairs. Further, while the sanction for prosecution was declined by the Ministry of Defence on 19 March 1997, the Ministry of Defence in 2009 contradictorily states that the case had not been received. Following the conclusion of investigations by the Jammu and Kashmir Police on 7 August 1993, the Government of Jammu and Kashmir sat on the file for two years before forwarding the case to the Ministry of Defence.

The conduct of the Ministry of Defence and the Government of Jammu and Kashmir is indicative of the non-seriousness with which the processes of justice in Jammu and Kashmir are administered. Particularly striking in the instant case is that the investigations do not seem to have focused at all on Major Verma as no sanction was sought for his prosecution. Considering that Major Verma was allegedly present when Ashiq Hussain Ganai was picked up, and had knowledge of his whereabouts subsequently, it needs to be investigated why the Jammu and Kashmir Police and the Government of

Jammu and Kashmir did not implicate him in the crime.

Also, the alleged promises made by him for the release of Ashiq Hussain Ganai suggest both his knowledge of the whereabouts of the victim and his control over his subordinates who it could be presumed were acting on his instructions.

The only point of contention in the instant case is the question of the continued detention or escape of Ashiq Hussain Ganai.

No proof of legal arrest is provided. No proof of the actual escape is provided. This case is yet another example of the armed forces making unsubstantiated allegations on the escape of an illegally detained person. The burden lies on the armed forces to prove how and when Ashiq Hussain Ganai escaped or whether he was killed in their custody. Similarly, the rationale of the Court of Inquiry that exonerated the armed forces in the case has not been provided.

Finally, this case serves as an example of the non-seriousness of the Jammu and Kashmir High Court as it has dragged on for 19 years. The manner in which the High Court has not appreciated the record before it, particularly on the involvement of Major General Verma in the crime, suggests that the High Court has failed in asserting its authority.

Case No. 21

Victim Details

1. Gowhar Amin Bahadur [Extra-Judicial Killing]
Age: 21
Occupation: Businessman [Readymade garments] and Gas cylinder vendor
Son of: Mohammad Amin Bahadur
Resident of: Danderkhah, Batamaloo, Srinagar
2. Javaid Ahmad Bakshi [Extra-Judicial Killing]
Son of: Ghulam Qadir Bakshi
Resident of: Baranpathar, Batamaloo, Srinagar

Alleged Perpetrators

1. Commandant Gopal Singh Shekawat, 4th Battalion, Border Security Force [BSF]
2. Deputy Commandant Sanyal Singh, 4th Battalion, Border Security Force [BSF]
3. B.D.Verma, Inspector, 4th Battalion, Border Security Force [BSF]
4. Ajay Singh, Inspector, 4th Battalion, Border Security Force [BSF]
5. M.S.Rawat, Constable, 4th Battalion, Border Security Force [BSF]
6. Harish Chand Panday, Constable, 4th Battalion, Border Security Force [BSF]
7. Kalyan Singh, Constable, 4th Battalion, Border Security Force [BSF]
8. Mukesh Kumar, Constable, 4th Battalion, Border Security Force [BSF]

Case Information

On 7 April 1993, there was a mine blast at the Batamaloo bus stand. On 8 April 1993, the adjoining area was cordoned off and men were ordered to gather at the bus stand. The BSF personnel present questioned the victim and there was an argument following which the alleged perpetrators took the victims away in a gypsy. They were taken to Banpora, Batamaloo to a cowshed where they were both killed. The body of Gowhar Amin Bahadur was found at the Police Control Room, Srinagar. The body of Gowhar Amin Bahadur had gunshots in the head and chest. Earlier, the family of Gowhar Amin Bahadur had heard three gunshots.

Subsequently, when legal proceedings were ongoing, a BSF lawyer, Bashir Ahmad Zargar, approached the family of Gowhar Amin Bahadur and attempted to bribe them to withdraw the case.

First Information Report [FIR] no. 74/1993 was filed at Shergari Police Station u/s 364 [Kidnapping/Abducting to murder], 302 [Murder] Ranbir Penal Code, 1989 [RPC]¹⁷. The FIR stated that the victims were picked up and killed. They were not a part of any militant organization. The FIR was filed following an application to the Chief Judicial Magistrate [CJM], Srinagar. This case was closed by declaring the perpetrators as untraced but then reopened. By communication dated 22 April 2014 from the Jammu and Kashmir Police information was provided that the investigation of the case stands concluded as challaned and the case diary file stands submitted for accord of government sanction which is yet to be received. Further, communication dated 24 September 2013 was provided. This is a communication from the Inspector General of Police [IGP] to the Director General of Police [DGP] seeking sanction. The latest status of this FIR was clarified by a communication dated 16 December 2014 from the Jammu and Kashmir police to the Government of Jammu and Kashmir Home Department. Alleged perpetrators 1, and 2-8 were chargesheeted. Government sanction was sought. But, in response to a separate RTI, it appears that the request for sanction has not been sent to the Ministry of Home Affairs. Instead, on 9 February 2015 the Home Department returned this file to the police seeking clarifications.

Prior to the above, FIR no. 65/1993 was filed at the Shergari Police Station u/s 3 [Licence for acquisition and possession of fire arms/ammunition]/27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 and TADA by the 4th Battalion BSF claiming that two unidentified militants were killed during a cordon and

search operation by various battalions of the BSF and some arms and ammunition were recovered from the spot¹⁸. This FIR was subsequently closed by declaring the perpetrators as untraced but then reopened. By communication dated 22 April 2014 from the Jammu and Kashmir Police information was provided that re-investigation of the case had been taken up and the army/BSF authorities have been approached for providing the nominal roll of the personnel who were performing operational duties at Danderkhah, Batamaloo on 20 January 1995 but the response was yet to be received and the case continues under investigation.

The post-mortem report of 17 April 1993 confirmed that the cause of death was multiple gunshot wounds.

A petition was filed before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 340/2003] for the completion of investigations, cooperation of the BSF in investigations and ex-gratia government relief. A letter dated 11 December 2002 from the Senior Superintendent of Police [SSP], Srinagar to the Deputy Commissioner, Srinagar, was annexed to the petition. This letter states that during investigations, and based on statements of witnesses, it was confirmed that the victims were abducted by the 4th and other battalions of the BSF on 8 April 1993. Communication had been made to the BSF to provide the nominal roll of the BSF personnel who were involved in the cordoning operation on that day. The BSF and the Commandant of the 4th Battalion BSF submitted objections to the petition where they stated that twelve persons were apprehended on that day, but the names of the victims were not listed. But, it was also stated that two unknown militants were killed on that day during firing, one of which may be the victims.

On 17 December 2003, the petition was dismissed for non-prosecution of the case by the petitioners.

The family of Gowhar Amin Bahadur approached the State Human Rights Commission [SHRC] on 21 October 2000 and a final decision was issued on 4 October 2006. The Inspector General of Police [IGP], Kashmir submitted a report dated 4 March 2002 which stated that investigations, and statements of witnesses recorded, confirmed that Gowhar Amin Bahadur was abducted by the 4th Battalion BSF during a cordon/search operation and then killed. The case was still under investigation. The Station House Officer [SHO] Batamaloo Police Station also submitted a report stating that the Commandant of the 4th Battalion BSF, having been summoned, never appeared before the Police Station. Inspector General, BSF was also requested to submit a nominal

17 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 2 June 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

18 Information on this FIR was sought through RTI on 5 May 2012. By communication dated 2 June 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

roll of officials involved in the operation. This too had not been submitted. Based on the above, the SHRC concluded that Gowhar Amin Bahadur had been abducted and killed by the 4th Battalion BSF. Rs. 2,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders] were recommended.

Another petition was filed before the High Court [Original Writ Petition (OWP) 187/2007] for the completion of investigations, payments of Rs. 2,00,000 ex-gratia government relief and compassionate employment under SRO-43, and compensation/damages of Rs.10,00,000. The police authorities submitted joint submissions before the High Court where the details of the investigations were provided, and it was stated that the investigations were ongoing. The Deputy Commissioner, Srinagar, relying on the BSF version of events stated that the family of Gowhar Amin Bahadur would not be entitled to relief/compensation. A compliance report dated 22 March 2010 was submitted by the Sub Divisional Police Officer [SDPO], Shaheed Gunj Police Station stating that investigations were ongoing, and statements of seven BSF personnel were recorded, including that of Commandant G. S. Shekawat that supported the BSF version of events.

On 28 May 2010, an enquiry was ordered by the High Court and it was conducted by the CJM, Srinagar, and was concluded on 26 February 2011. The enquiry found in favor of the family of Gowhar Amin Bahadur and found that the version of events of the BSF were baseless. On 10 June 2011, the High Court found in favor of the family of Gowhar Amin Bahadur and ordered Rs. 2,00,000 ex-gratia government relief, compassionate employment and completion of investigations to be monitored by the CJM, Srinagar. Subsequently, a contempt petition [no. 462/2011] was filed for the non-implementation of the High Court order. The police authorities provided written submissions before the High Court. It was stated that investigations were ongoing, witnesses were being examined, and the High Court order was not being disobeyed.

The Deputy Commissioner, Srinagar submitted that Rs. 1,00,000 had already been sanctioned/ provided to the family of the victim and the additional Rs. 1,00,000 had been sanctioned and the compassionate employment under SRO-43 were being processed.

On 3 April 2012, the High Court ordered that the issue of compassionate appointment be finalised in two weeks. The matter was listed in two weeks and a status report on the investigations was sought.

On 11 September 2012 the High Court came down harshly on the Deputy Commissioner, Srinagar for disobeying the orders of the court in relation to

compassionate employment and the ex-gratia government relief. The High Court stated that regardless of Rs. 1,00,000 already being paid, the family of the victim was to be now paid Rs. 2,00,000. Latest status of investigations was also sought.

By order dated 9 July 2012, the CJM, Srinagar, noted that the BSF was not cooperating with the investigations and stated that the investigations must be expedited. The matter was put up for hearing on 20 August 2012. Ultimately, the police filed a status report on 17 April 2013 and stated that sanction would be sought. But, no chargesheet was filed on this occasion. As a result, the wife of victim no.1, citing the Pathribal Supreme Court judgment sought that a full chargesheet be filed while awaiting sanction. But, the lower court and subsequently the High Court dismissed this application.

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Information was provided.

The family of Gowhar Amin Bahadur has received Rs. 2,00,000 compensation to date.

The family of Gowhar Amin Bahadur gave a statement to the IPTK on 12 March 2012.

The instant case serves as a strong indictment of the various processes of justice. A case of 1993 remains pending with limited progress, except for the payment of Rs. 1,00,000 of ex-gratia government relief. This notwithstanding a confirmation by the SHRC, CJM, Srinagar and the High Court that the victim was abducted by the 4th Battalion BSF. Further, Commandant G. S. Shekhawat has admitted his role in the operation on 8 April 1993. This coupled with the findings on the operation being one where the victim was abducted and killed, the role of Commandant G. S. Shekhawat would prima facie be established in the killing of the victim. The role of Deputy Commander Sanyal Singh, named by the family of the victim as being responsible, would have to be further established. Even the police has not indicted this alleged perpetrator.

The filing of the FIR by the BSF while claiming to have killed unidentified militants is yet another example of the fake encounters carried out by the armed forces. The subsequent exposure of the falsehood of the FIR and the non-cooperation by BSF with the investigations suggests that the BSF enjoyed impunity for carrying out a fake encounter and non-cooperation with the investigations. This case also indicts the police for filing the FIR only after the intervention of the CJM, Srinagar and for not reporting the non-cooperation of the BSF in a timely manner. The police only referred to the non-cooperation of the BSF when required to do so by the SHRC, in 2000, and the High Court, in 2003.

The irresponsible attitude of the then Deputy Commissioner, Srinagar is condemnable. Despite the letter dated 11 December 2002 from SSP, Srinagar to the Deputy Commissioner, Srinagar which confirmed the abduction of the victim by the BSF, and the SHRC decision based on the report submitted by the IGP, Kashmir that confirms the abduction and killing of the victim by the BSF, the Deputy Commissioner, Srinagar relied on the version of the accused BSF.

The Ministry of Home Affairs appears to have taken no action in this case. The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided on this case. But, it appears that the casefile is still pending with the Government of Jammu and Kashmir which at every stage is delaying the case.

A case of gruesome human rights violations has been allowed to remain pending for 19 years due to the all pervasive culture of impunity.

Case No. 22

Victim Details

Abdul Majid Mir [Extra-Judicial Killing]
 Brother of: Abdul Rashid Mir
 Resident of: Zanzana, Kowlapathi, Panzalla,
 Baramulla District

Alleged Perpetrators

1. Naik [Corporal] A.A. Parma, 19 Maratha Light Infantry [MLI], Army

Case Information

First Information Report [FIR] no. 45/1993 u/s 302 [Murder] was filed at the Panzalla Police Station¹⁹. The 22 May 2012 communication from the Jammu and Kashmir Police states the case was closed by declaring the perpetrators as untraced. By communication dated 9 January 2014 it was stated that the case was closed on 19 August 2011. By further communication dated 9 July 2012 from the Jammu and Kashmir Police a status report was provided that states that sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], was declined by the "Ministry of Home Affairs". This information was

said to have been received vide a letter dated 11 November 2008 from the Ministry of Defence.

The FIR states that on 6 May 1993 there was a crackdown by the army in Zanzana, Kowlapathi, Panzalla. Abdul Majid Mir was shot in his chest by the army and he died.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA stated in relation to this case that it was not received.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that it was sent to the Ministry of Home Affairs on 9 March 2009 and sanction was awaited.

It is shocking that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir sixteen years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

It needs to be ascertained whether the Jammu and Kashmir Government has at all sent the case for sanction for prosecution to the Ministry of Defence and whether the Ministry of Defence has misplaced the case file. Atleast after the 2009 affidavit by the Ministry of Defence, the Jammu and Kashmir Government should have considered even re-sending the case or clarifying when and how the case was sent.

In any case, after providing this information before the High Court of Jammu and Kashmir in 2009 and also in 1993 after the case was filed against the personnel of the army the Ministry of Defence seems to have cared very little about the Jammu and Kashmir Police investigations or in instituting a process for delivering justice. The available documents do not suggest that even a court-martial was conducted in this case by the army.

The Jammu and Kashmir has inexplicably closed the case by declaring the perpetrators as untraced despite sanction for prosecution still being awaited.

The reference to the Ministry of Home Affairs by both the Government of Jammu and Kashmir and the Jammu and Kashmir Police in the context of sanction for prosecution in a case which clearly pertains to the Ministry of Defence shows the non-seriousness of the Government of Jammu and Kashmir and police.

¹⁹ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 22 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

Case No. 23Victim Details

Constable Mohammad Ashraf, Kangan Police Station [Assault]

Alleged Perpetrators

1. Captain Badshah Khan, 299th Field Regiment, Army

Case Information

First Information Report [FIR] no. 35/1993 u/s 353 [Assault/Criminal force to deter public servant from discharging duty] Ranbir Penal Code, 1989 [RPC] was filed at the Kangan Police Station²⁰. The 9 May 2012 communication from the Jammu and Kashmir Police states that on 30 May 1993 Constable Mohammad Ashraf reported at the Police Station to the effect that few army vehicles on the way from Sonamarg to Srinagar stopped at the Kangan market where he was performing patrolling/traffic duty along with Constable Manzoor Ahmad and Head Constable Wali Mohammad of Kangan Police Station. An army officer wearing a jacket came down from his vehicle, forcibly snatched the stick from him and started thrashing him in the market. The officer also threatened to shoot Constable Manzoor Ahmad. The 9 May 2012 communication further states that during the course of investigation, the identity of the army officer responsible for commission offence could not be established.

Finally, the case was closed by declaring the perpetrators as untraced. But, by communication dated 9 July 2012 from the Jammu and Kashmir Police it was stated that during investigations the crime was proved against the alleged perpetrator. But, this communication concludes by stating that the case was closed as untraced on 5 September 2007. By communication dated 2 December 2013 the police state that the case was closed as not admitted but the final report had not been submitted.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 in relation to this case that the Ministry of Home Affairs declined sanction.

The Government of Jammu and Kashmir has mistakenly sent the case for sanction for prosecution to the Ministry of Home Affairs when the case clearly pertains to the Ministry of Defence.

It is unclear if the Ministry of Defence was ever approached for grant of sanction. Further, the available documents do not suggest that even a court-martial was conducted in this case.

Finally, the communications of the Jammu and Kashmir Police in response to the RTI application filed on the FIR are contradictory. On 9 May 2012 it is stated that the identity of the perpetrator could not be identified, whereas the 9 July 2012 communication clearly states that investigations confirmed the role of the alleged perpetrator. The most recent communication suggests that the case was closed as not admitted.

Case No. 24Victim Details

Abdul Khaliq Wani [Abduction, Extra-judicial killing]
Age: 45

Occupation: Principal, Islamia Model High School, Safapora, Bandipora district

Resident of: Madwan, Hajin, Bandipora district

Alleged Perpetrators

1. Usman Majeed, Government Gunman [Ikhwan]
2. Abdul Rehman Shalla alias Dilawar [Nik Shalla], resident of Hajin, Government Gunman [Ikhwan]
3. Nazir Ahmad Kochak alias Mumtaz, resident of Hajin, Government Gunman [Ikhwan]
4. Mohammad Maqbool alias Magseer, resident of Hajin, Government Gunman [Ikhwan]
5. Nazeer Ahmad Wani, resident of Saderkoot, Balla, Government Gunman [Ikhwan] [deceased]

Case Information

On 6 June 1993, Abdul Khaliq Wani was out in his orchards grazing his cows in the field. In the evening, he was trying to cross the stream of Prang Madwan Nallah in a boat so as to go for prayers to the mosque, which was across the Madwan Mohalla. Then, around 20 Ikhwan approached him and called him. They were Usman Majeed, Abdul Rehman Shalla alias Dilawar [Nik Shalla], Nazir Ahmad Kochak alias Mumtaz, Mohammad Maqbool alias Magseer, and Nazeer Ahmad Wani of Saderkoot [later killed]. Abdul Rehman Shalla headed this group. He was also the head of the Ikhwan-ul-Muslimeen in the area. These Ikhwan took the victim out of the boat before he could start crossing the stream and abducted him. The victim's home was just around 50 meters away from the same side of the stream from which he was

²⁰ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 9 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013.

abducted.

The news of his abduction spread immediately and reached the victim's family. After hearing the news of his abduction, his family, which at that time included his son Sajad Ahmad Wani, his wife Rehti Begum, his two brothers Abdul Satar Wani and Abdul Rasheed Wani, his two brother-in-laws Abdul Aziz Dar and Ghulam Nabi Dar and his two nephews Mushtaq Ahmad Wani [son of Abdul Satar] and Muneer Ahmad Wani [son of Abdul Satar], rushed towards the Ikhwan. When the family reached the spot of abduction, they saw the victim's arm being held by Abdul Rehman Shalla and being taken to the Government Middle School, Madwan. The victim's son, wife and brothers cried and pleaded in front of the Ikhwan for the victim's release but their plea fell on deaf ears. Instead, the Ikhwan, namely Abdul Rehman Shalla, Nazir Ahmad Kochak and Usman Majeed aimed their guns at the victim's chest and pulled the trigger. They pumped 6 bullets in his chest and his family witnessed the crime. This caused immediate on the spot death of the victim.

After killing him, the Ikhwan ran away from the spot. His family walked towards the body of the victim, which was lying on the ground, and his son checked if his father was still alive or not. During that time, BSF personnel, wearing black goggles and carrying a stick, from Hajin camp arrived at the spot of the incident. One of them asked for the deceased's son and when his son informed him about his relation to the victim, he was abused and beaten by the officer and thrashed on his back, shoulder and legs, while his family was pushed away. The BSF officer said that the victim, Abdul Khaliq Wani, deserved this for being a member of Jamaat-e-Islami. BSF personnel saw the Ikhwan leaving the spot of the incident.

After this, the victim was taken back home in a horse-cart for last rituals and then buried in his native graveyard. No police or any other administrative official visited the victim's home for any information regarding the incident. Next day, one village *chowkidar*, Abdul Samad Rather, visited the victim's home and took details of his killing. Except the *chowkidar*, no other official visited the house to record the information of the killing. Out of the fear of further consequences, the family did not approach the police or register a case anywhere.

One month after the killing, the Ikhwan responsible for the killing, particularly Abdul Rehman Shalla, started harassing the victim's family and warned the villagers and family to not to raise any query regarding his killing or else they would be persecuted. After months of constant harassment, the victim's son, Sajad Ahmad Wani, left his mother and sisters at his uncle's place, and migrated to Srinagar due to the fear of further torture and harassment by the Ikhwan. His son stayed there in Srinagar till 2002.

Due to constant torture and harassment by Ikhwan and their violent attitude, the victim's family did not file any complaints against the culprits mentioned.

An FIR was filed at the Police Station Hajin. The victim's family was given ex-gratia government relief of Rs. 1 lakh and a job under Statutory Rules and Orders 43 [compassionate employment].

The son of the victim, Sajad Ahmad Wani, gave the above statement to the IPTK on 6 June 2015.

The witness statement is clear, and cogent evidence is presented of the killing of the victim. The allegations warrant further investigation. The present status of the FIR needs to be ascertained. The eye-witness testimonies need to be recorded as they form the basis of any further prosecution. Usman Majeed is a politician in the Congress party and based on the evidence above there exists a clear case against him that may be processed.

Case No. 25

Victim Details

Nazir Ahmad Mir [Torture, Extra-judicial killing]
Occupation: Government employee
Son of: Ghulam Mohammad Mir
Resident of: Singh Pora, Baramulla district

Alleged Perpetrators

1. Officer Sharma, 132 Battalion HQ Border Security Force [BSF], Singhpura
2. Rajesh Kumar, Inspector [Also referred to as being "Sub-Inspector" in documents], 132 Battalion HQ Border Security Force [BSF], Singhpura
3. Surinder Singh [Also referred to as "Mohinder Singh" in documents], Head Constable, 132 Battalion HQ Border Security Force [BSF], Singhpura
4. PK Sataj [Also referred to as "AK Soha" in documents], Constable, 132 Battalion HQ Border Security Force [BSF], Singhpura

Case Information

On 13 July 1993, there was an ambush by militants on an army truck. At around 3 am, BSF 132 battalion headed by Officer Sharma [notorious in the area] raided the house of Nazir Ahmad. The BSF had received a message by some source that Nazir Ahmad had ambushed the army truck. They also made an allegation that Nazir dropped his card on the spot of ambush. But they had actually taken his card when they raided the house and took him. During the raid, the BSF was asking for Nazir Ahmad Mir from his father Ghulam Mohammad Mir. BSF entered the room where Nazir was sleeping. They beat him and his father with the butt of their guns. They also took Rs.

80000 from his room. Nazir had only one arm, as he had lost his one arm after receiving an electric shock prior to this incident.

He was then beaten by a hockey stick in his room. After a while, he was taken out of the house and was administered electric shocks. After that, he was dragged out and taken to a place called Muqam, which is 5 kilometers away from his house. There he was tied to a tree and was shot dead. After his killing, his dead body was handed over to police station Pattan.

Besides the victim, the army picked up few more persons. But only the victim was killed. Later, Officer Sharma approached the family and apologized that he had made a mistake, as Nazir was “innocent”.

The sister of the victim, Parveena, gave the following statement to IPTK on 13 June 2015.

First Information Report [FIR] No. 207/1993 under section 302 [murder] Ranbir Penal Code [RPC] was filed at the Police Station Baramulla. By communication dated 26 December 2013, in response to information sought under RTI on all FIRs related to custodial killings in Jammu and Kashmir, this information regarding the alleged perpetrator [Surinder Singh and PK Sataj], and that they belonged to the 132 Battalion Headquarters at Singhpura, was provided and a copy of the FIR was provided. Here, the Police Station was wrongly noted as Pattan. Further information on the FIR was sought through RTI on 14 November 2014. A separate RTI was also filed regarding all FIRs in Jammu and Kashmir against state forces. By communication dated 25 December 2013 from the Jammu and Kashmir Police, a copy of the FIR was provided and information that the case was under investigation. But, by communication dated 6 January 2015 a letter from SSP, Baramulla to DIG, Baramulla was provided. This letter states that the BSF handed over the body of the victim and said he was killed in cross-firing while showing them a hideout. Further, that during investigations, the following were identified as accused: Sub-inspector Rajesh Kumar, Driver/Constable Mohinder Singh and Constable AK Soha. Sanction for prosecution was sought. But also provided was a communication dated 26 April 2011 from the Chief Prosecuting Officer, Baramulla to the police in Baramulla stating that Section 164-A statements before a judge are pending and therefore that may have to be done before seeking sanction. In addition, English version of urdu statements are to be prepared.

Officer Sharma is indicted by the statement and the other alleged perpetrators are indicted by the investigations of the police. But, the RTI information

is contradictory because in response to another RTI the police states that the case is still under investigation. Further, it seems that Officer Sharma has not been indicted. Finally, it appears sanction for prosecution may have been sought in this case for three of the alleged perpetrators.

Case No. 26

Victim Details

1. Abdul Rashid Dar [Extra-Judicial Killing]
Age: 35
Occupation: Carpenter
Son of: Ghulam Mohammad Dar
Resident of: Naidkadal, Daribal, Srinagar
2. Hajra [Extra-Judicial Killing]
Age: 30
Spouse: Abdul Rashid Dar
Resident of: Naidkadal, Daribal, Srinagar
3. Hilal Ahmad [Extra-Judicial Killing]
Age: 8
Son of: Abdul Rashid Dar, Hajra
Resident of: Naidkadal, Daribal, Srinagar

Alleged Perpetrators

1. Sub-Inspector [SI] Ajmer Singh, 60th Battalion Border Security Force [BSF], Nallamar road
2. Constable Jai Prakash, 60th Battalion Border Security Force [BSF]

Case Information

On 1 August 1993, BSF personnel, after seeing Hilal Ahmad outside his residence, fired upon him. As Abdul Rashid Dar and Hajra, his parents, came to his rescue, they were fired upon as well and they were killed. Hilal Ahmad succumbed to his wounds in the hospital. The killing was carried out by SI Ajmer Singh.

Following this there were protests in the area and they were fired upon by the police and the army. Ten persons were killed in the firing.

First Information Report [FIR] no.136/1993 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Khanyar Police Station.²¹ The Jammu and Kashmir Police state that a chargesheet was filed against the alleged perpetrators and government sanction under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], was awaited. By communication dated 30 November 2013 it was stated that sanction was yet to be received. By communication dated 22 April 2014 from the Jammu and Kashmir Police a copy of letter dated 6 December 2005 was provided. This letter

21 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 2 June 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. Further, RTI was filed on 18 December 2012 to Jammu and Kashmir Police regarding custodial killings in Jammu and Kashmir between 1989 and 2012. By communication dated 4 January 2013 information was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

was sent by Senior Superintendent of Police [SSP], Srinagar to Deputy Inspector General of Police [DIG], Srinagar and states that the case had been “closed as challan” and the case diary had been submitted to the government for accord of sanction for launching prosecution against the accused persons.

The family of the victims state that they did not pursue the case. But, they received Rs. 3,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders] for two members of the family.

The family of the victims gave a statement to the IPTK on 27 February 2012.

Despite the passage of 19 years, it appears that while investigations have resulted in a chargesheet, government sanction is yet to be received. Further, the state of absolute impunity is clear as the IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir but no information was provided on this case.

Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided on this case.

Case No. 27

Victim Details

Sajjad Ahmad Dar [Abduction and Extra-Judicial Killing (Custodial Killing)]

Age: 21

Occupation: Driver

Son of: Mohammad Sultan Dar

Resident of: Pandrathan, Vethpora, Srinagar

Alleged Perpetrators

1. Sukhdev Singh, Lance Naik, 6th Para Regiment, Army
2. Rajpal Singh, Lance Naik, 6th Para Regiment, Army

Case Information

On 14 August 1993, Sajjad Ahmad Dar was driving his truck from Leh to Srinagar. On reaching Drass Pul, he stopped his truck and he was confronted by the alleged perpetrators. He was beaten and abducted.

First Information Report [FIR] no.24/1993 was registered at the Panth Drass Police Station. During the search operations by the police, the dead body of the victim was found. Serious injuries were noted on the body. Sections 302 [Murder] and 34 [Common

intention] Ranbir Penal Code, 1989 [RPC] were added to the FIR. Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 15 October 2013. Further information sought through RTI dated 14 November 2014. By communication dated 16 December 2014 from the Jammu and Kashmir Police a copy of the chargesheet in the case, FIR, and information related to the case was provided. The information provided, summarized by the Station House Officer [SHO], Police Station Drass, is that on 14 August 1993 the victim was driving from Drass towards Srinagar when he was stopped near the “TCP Bridge Drass” for the purpose of registration. He was stopped by the alleged perpetrators. The victim was then beaten by the alleged perpetrators on the pretext of parking his truck in a wrong way. He was then “disappeared” from there. On 18 August 1993, the father of the victim, Mohammad Sultan Dar, lodged a written complaint about his missing son, and a missing report vide Daily Diary Report number 20, dated 18 August 1993, was entered at Police Station Drass, and during search the dead body of the victim was recovered from the Drass river near “Sumat Thang Drass” on 20 October 1993 with multiple grievous injuries present on the body which were injuries of violence. The dead body was highly decomposed as it had been under water. The dead body of the victim was identified by his father and Mohammad Latief Beigh, son of Asadullah Beigh, resident of Pandrathan, Srinagar. Vide Daily Diary Report number 15 dated 2 October 1993 on recovery of the dead body, inquest proceedings were initiated to ascertain the cause of death and post-mortem was conducted. The FSL report maintained that no poisons were detected in the exhibits. The body was recovered in an advanced stage of decomposition, with certain fractures. There were no signs of drowning on chemical examination, dated 14 December 1993. The conclusion of the cause of death was that it had been caused not due to drowning but due to multiple fatal injuries caused by violence and severe beating etc. On 15 December 1993, FIR no. 24/1993 was filed and inquest proceedings closed. During the course of investigations, the case was concluded, based on circumstantial evidence, against the two alleged perpetrators. The charge sheet in the case was filed on 15 April 1999. The alleged perpetrators were lodged in jail only on 16 November 2003 by the orders of the Sessions and District Judge, Kargil. However, both the alleged perpetrators were released, following acquittal, which was intimated by Public Prosecutor, Sessions Court, Kargil, vide signal dated 30 September 2007.

The family of the victim filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 328-30/1996] for compensation of Rs. 40,00,000.

Before the court, it was submitted that following investigations, the alleged perpetrators were found to be involved in the crime. But, a charge sheet could not be produced due to the non-cooperation of the army

for two years. The High Court ordered Rs. 4,00,000 on 13 August 2003.

While the Jammu and Kashmir Police confirm the involvement of the alleged perpetrators in the crime, the army has appeared to once again ensure impunity for its forces. First, the arrest of both alleged perpetrators was delayed until November 2003. Second, it appears they have been acquitted. In the absence of the judgment of acquittal it is not possible to comment on the acquittal itself, except that yet another extra-judicial execution has gone unpunished. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Finally, considering that trial appears to have taken place, it is curious as to why the records nowhere suggest that sanction for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], was sought or received.

Case No. 28

Victim Details

Abdul Rashid Shah [Abduction and Extra-Judicial Killing (Custodial Killing)]

Age: 27

Occupation: Tailor

Son of: Ghulam Nabi Shah

Resident of: Faqirwani, Qadeem, Eidgah, Baramulla

Alleged Perpetrators

1. Major Devinder Paul Singh, 15th Punjab Regiment, Army, Camp Filtration Plant, Bagh-e-Islam

Case Information

On 27 August 1993, the army personnel headed by Major Devinder Paul Singh cordoned the whole Faqirwani area. During the search that followed, Abdul Rashid Shah was picked up. He was taken along by the army to all the houses in the area while the search operation was carried out. He was then released.

The next day Abdul Rashid Shah was once again taken along for search operations but he was not released and instead taken to the Filtration Plant Camp, Bagh-e-Islam. The family was informed that gun shots had been heard from the camp at 11:45 am on that day.

The body of Abdul Rashid Shah was handed over to the Baramulla Police Station.

Following the incident, the family of the victim states that the father of Abdul Rashid Shah was taken to the

15th Punjab Regiment Headquarters at Woshkoora road three / four times and made to give his thumb impression on certain documents.

The family of Abdul Rashid Shah received Rs. 1,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders].

The family of Abdul Rashid Shah gave a statement to the IPTK on 30 December 2011.

First Information Report [FIR] no.239/1993 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Baramulla Police Station²². The communication dated 22 May 2012 by the Jammu and Kashmir Police stated that the case was under investigation. A separate RTI was filed regarding all FIRs against the State forces in Jammu and Kashmir. By communication dated 25 December 2013 from the Jammu and Kashmir Police a copy of the FIR was provided and information that sanction for prosecution was awaited.

The Government of Jammu and Kashmir, in response to a RTI on sanctions for prosecutions under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 in relation to this case that sanction for prosecution was sought by letter dated 11 June 2002 and was awaited.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir nine years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

Further, available documents from the Ministry of Defence do not mention this case at all, thereby suggesting that the case was never received on their end.

The available documents do not suggest that even a court-martial was conducted in this case by the army.

Finally, investigations need to be conducted on what documents the father of Abdul Rashid Shah provided his thumb impression.

Case No. 29

Victim Details

Mohammad Ashraf Najar [Abduction, Torture and Extra-Judicial Killing (Custodial Killing)]

Age: 24

Occupation: Businessman

Son of: Mohammad Akbar Najar [deceased]

Resident of: Stadium Colony, Baramulla

²² Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. A copy of the FIR was provided by the Jammu and Kashmir Police by communication dated 22 May 2012.

Alleged Perpetrators

Major Devinder Paul Singh [Operational name: Tiger]²³,

1. 15th Punjab Regiment, Army, Camp Filtration Plant, Bagh-e-Islam

Case Information

On 25 September 1993, during a crackdown at the Baramulla market, Mohammad Ashraf Najar was picked up by the 15th Punjab Regiment, Army headed by Major D.P.Singh. Mohammad Ashraf Najar was taken to the Filtration Plant Camp.

The family of Mohammad Ashraf Najar approached the personnel at the camp for the release of the victim but they were informed that there were serious allegations against the victim. The family states that these allegations – linking him to the militancy – were false.

Mohammad Ashraf Najar was released late on the night of 28 September 1993. Mohammad Ashraf Najar had been severely tortured, including having been forced to drink acid and succumbed to his injuries and his body was brought to Baramulla [having been taken to Srinagar for treatment] on 30 September 1993.

Four days after the death of Mohammad Ashraf Najar, his brother and father were picked up by Major D.P.Singh, severely beaten and asked to withdraw the First Information Report [FIR] that had been filed. The family of the victim refused to do so.

The family received Rs.1,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders].

The family of the victim gave a statement to the IPTK on 30 December 2011.

FIR no.295/1993²⁴ u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Baramulla Police Station²⁵. A separate RTI was filed on all FIRs against State forces in Jammu and Kashmir. By communication dated 25 December 2013 from Jammu and Kashmir Police a copy of FIR was provided and information that sanction for prosecution was awaited. The 22 May 2012 communication from the Jammu and Kashmir Police states that the case was closed by declaring the perpetrators as untraced. But, contradictorily, in response to RTI filed on 15 October 2013, by communication dated 22 April 2014 from Jammu and Kashmir Police, informed was provided that the case

was still under investigation and therefore “closure report” could not be provided. By communication dated 6 January 2015 information was provided that sanction was awaited.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was not received.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction was sought on 28 March 1995 and was awaited.

A document from the Station House Officer [SHO], Baramulla Police Station states that the victim was not involved in any subversive activities.

Another letter from the police to the Deputy Commissioner, Baramulla, dated 7 December 1993, confirms that Mohammad Ashraf Najar was picked up on 25 September 1993, released on 28 September 1993, and died on 29 September 1993. The letter also states that the victim was not involved in any militant activities.

It needs to be ascertained whether the Jammu and Kashmir Government has at all sent the case for sanction for prosecution to the Ministry of Defence and whether the Ministry of Defence has misplaced the case file. At least after the 2009 affidavit by the Ministry of Defence, the Jammu and Kashmir Government should have considered even re-sending the case or clarifying when and how the case was sent.

In any case, after providing this information before the High Court of Jammu and Kashmir in 2009 and also in 1993 after the case was filed against the personnel of the army the Ministry of Defence seems to have cared very little about the Jammu and Kashmir Police investigations or in instituting a process for delivering justice.

The available documents do not suggest that even a court-martial was conducted in this case by the army.

Finally, the Jammu and Kashmir has inexplicably closed the case by declaring the perpetrators as untraced despite sanction for prosecution still being awaited.

23 This alleged perpetrator appears to be the same as the alleged perpetrator listed in case no.87 and his full name would then be: Devinder Paul Singh.

24 The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], and the Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA, on 6 September 2011, incorrectly state the FIR no. to be 259/1993.

25 Information on this FIR was sought through RTI on 5 May 2012. By communication dated 22 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

Case No. 30Victim Details

Bagh Singh [Torture, Extra-judicial killing]
Resident of: Panzalla, Baramulla district

Alleged Perpetrators

1. Arvinder Singh, ex-Deputy Commandment,
Border Security Force [BSF]

Case Information

FIR no. 56/1993 under Section 302 [murder] Ranbir Penal Code [RPC] dated 9 November 1993 was filed at the Panzalla Police Station. The FIR states that on 19 October 1993 the victim and his wife went to Deva Singhs house. On return, the BSF were on the road and asking people to get down and checking cards. Bagh Singh told them his name and that he was retired army havaladar. He was then taken with them in a gypsy. The others were asked to wait there. On 20 October 1993 the body was at Baramulla police station. He had been tortured to death.

Information was sought on this FIR through RTI dated 14 November 2014. By communication dated 5 January 2015 from the Jammu and Kashmir Police a copy of the FIR and chargesheet were provided. The chargesheet is dated 5 May 2001.

By communication dated 8 November 2000, Ministry of Home Affairs informed the Government of Jammu and Kashmir that sanction for prosecution under AFSPA was granted for the alleged perpetrator, who at the time of the communication, in November 2000, was serving a 15 year imprisonment [rigorous] following a conviction by the Special Court, NDPS, Bikaner, Rajasthan under the NDPS Act. It appears that in the communication from the Government of Jammu and Kashmir, the name of the alleged perpetrator was wrongly noted as "Ravinder Singh".

This appears therefore to be a case where sanction for prosecution was granted. Yet, the government of Jammu and Kashmir does not appear to have any record of this as it maintains that there has been no case in which sanction has been granted. Also, it needs to be ascertained whether the alleged perpetrator was actually then tried by a civilian court in Jammu and Kashmir.

On 5 November 2014, the IPTK researchers met with the wife of the victim to record her testimony on this case. She refused to provide any testimony to the IPTK.

Case No. 31Victim Details

[Massacre / Extra-Judicial Killings]

1. Manzoor Ahmad Dar
Age: 18
Occupation: Student
Son of: Sonaulah Dar
2. Irshad Hussain Tak
Age: 18
Occupation: Student
Son of: Ghulam Mohi-ud-Din Tak
3. Javed Ahmad Waza
Age: 16
Occupation: Student
Son of: Ghulam Mohammad Waza
4. Sheikh Shabir Ahmad
Age: 20
Occupation: Student
Son of: Sheikh Ghulam Nabi
5. Shabir Ahmad Shah
Age: 18
Occupation: Student
Son of: Abdul Majid Shah
6. Mohammad Saleem Boda
Age: 35
Occupation: Government Employee
Son-in-law of: Ghulam Mohammad Tak
7. Afroz Ahmad Zarger
Age: 11
Occupation: Student
Son of: Abdul Rashid Zarger
8. Ghulam Mohammad Zarger
Age: 50
Occupation: Businessman
Son of: Mehda Joo Zarger
9. Bashir Ahmad Wani
Age: 30
Occupation: Businessman
Son of: Ghulam Ahmad Wani
10. Mohammad Abdullah
Age: 50
Occupation: Tailor
Son of: Ghulam Mohammad Sheikh
11. Kamal Ji Koul
Age: 16
Occupation: Student
Son of: Dwarka Nath
12. Mohammad Altaf Sheikh
Age: 16
Occupation: Student
Son of: Nazir Ahmad
13. Riyaz Ahmad Gatoo
Age: 18
Occupation: Student
Son of: Seraju-Din Gatoo
14. Ghulam Mohammad Pandit
Age: 60
Occupation: Businessman
Son of: Ghulam Rasool
15. Mohammad Saleem Turay
Age: 40
Occupation: Government Employee
Son of: Mohammad Abdullah Turay
16. Mohammad Shafi Wagay
Age: 22

- Occupation: Businessman
Son of: Mohammad Ramzan Wagay
17. Mukhtar Ahmad Ganai
Age: 18
Occupation: Student
Son of: Mohammad Shaban
 18. Mohammad Iqbal Ganai
Age: 17
Occupation: Student
Son of: Mohammad Maqbool
 19. Abdul Rashid Vaid
Age: 17
Occupation: Student
Son of: Abdul Hamid Baba
 20. Manzoor Ahmad
Age: 18
Occupation: Businessman
Son of: Zoonah
 21. Mushtaq Ahmad Hamdani
Age: 18
Occupation: Student
Son of: Ghulam Nabi Hamdani
 22. Mohammad Shafi Hamdani
Age: 18
Occupation: Student
Son of: Hanifa
 23. Fayaz Ahmad Tak
Age: 20
Occupation: Businessman
Son of: Fatima
 24. Abdul Rahman Zaroo
Age: 65
Occupation: Businessman
Son of: Abdul Aziz Zaroo
 25. Mohammad Ashraf Zarger
Age: 15
Occupation: Student
Son of: Khalil Mohammad Zarger
 26. Manzoor Ahmad Zarger
Age: 40
Occupation: Businessman
Son of: Abdul Samad Zarger

Residents of: Bijbehara, Islamabad District,
Jammu and Kashmir

27. Gull Mohammad Kachroo
Age: 60
Occupation: Businessman
Son of: Nissar Ahmad Kachroo
28. Parvez Ahmad Dar
Age: 18
Occupation: Student
Son of: Mohammad Akber Dar
29. Showkat Ahmad Khanday
Age: 18
Occupation: Businessman
Son of: Mohammad Ramzan Khanday
30. Ghulam Hassan Waza

- Age: 50
Occupation: Government Employee
Son of: Abdul Razak Waza
31. Karim Ganai
Age: 45
Occupation: Government Employee
Son of: Ramzan Ganai
Residents of: Pagalpora Tehsil, Kulgam
District, Jammu and Kashmir

Alleged Perpetrators

1. Deputy Commandant J. K. Rodala, 74th Battalion Border Security Force [BSF]
2. Sub-Inspector [SI] Malhar Singh, 74th Battalion Border Security Force [BSF]
3. Naik [Corporal] Nand Kishore, 74th Battalion Border Security Force [BSF]
4. Naik [Corporal] Khairul Hussain, 74th Battalion Border Security Force [BSF]
5. Lance Naik [Lance Corporal], K. Singh, 74th Battalion Border Security Force [BSF]
6. Constable H. B. Jayrama, 74th Battalion Border Security Force [BSF]
7. Constable Shiv Murtiappa, 74th Battalion Border Security Force [BSF]
8. Constable Ravi Kumar, 74th Battalion Border Security Force [BSF]
9. Constable Kulwant Singh, 74th Battalion Border Security Force [BSF]
10. Constable Bhoop Singh, 74th Battalion Border Security Force [BSF]
11. Constable Satisan T.R., 74th Battalion Border Security Force [BSF]
12. Constable Prem Singh, 74th Battalion Border Security Force [BSF]

Case Information

On 22 October 1993 a procession of about 2000 to 3000 people proceeded from the Jamia Masjid, Bijbehara in protest against the siege at Hazratbal shrine. The procession was peaceful and did not include any armed militants.

As the procession reached the main highway, Deputy Commandant J. K. Rodala took out his revolver and fired shots in the air. Following this, the other alleged perpetrators, and other personnel of the 74th Battalion BSF, fired indiscriminately on the procession. This resulted in the death of 35 civilians on the spot including the above-listed victims. Over one hundred other persons sustained injuries.

Following the incident, a first information report [FIR] no. 90/1993 u/s 302 [Murder], 304, 307 [Attempt to murder] and 109 Ranbir Penal Code, 1989 [RPC] was filed at the Bijbehara Police Station²⁶.

26 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. By communication dated 16 November 2013 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI dated 14 November 2014.

Further, the Government of Jammu and Kashmir ordered an enquiry by a Magistrate and the report was submitted on 13 November 1993. By communication dated 16 May 2014 from the Jammu and Kashmir Police the following is stated: "The investigation of these cases stands closed as challaned. The CD files along with relevant documents and evidence both oral and documentary stand submitted to concerned quarters for accord of sanction to prosecute or otherwise, the case is under investigation and as such, it comes under the purview of section 6(b) of Jammu and Kashmir Right to Information Act, 2009". By communication dated 18 December 2014, from the Jammu and Kashmir Police, it was stated that the letter of Sub-Divisional Police Officer, Bijbehara, where under the CD file had been sent for accord of sanction, was enclosed, but in fact no documents were provided.

Relatives of the 31 victims listed above filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 149/1996] seeking compensation of Rs. 50,00,000 each. The Government of Jammu and Kashmir and the Jammu and Kashmir Police made their submissions before the High Court. First, they accepted that the procession, while "highly sentimental", was peaceful. Second that the firing on the procession was by a BSF patrolling party. Third, that the investigation in the case was finalized and sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] had been sought. Fourth, that the Government of Jammu and Kashmir and Jammu and Kashmir Police cannot be held responsible for the acts, if established, of the BSF and that Rs. 1,00,000 ex-gratia government relief had already been paid to the families of the deceased. The Union of India [through the Ministry of Home Affairs and specifically by the Deputy Inspector General (DIG), BSF, Rajouri] made the following submissions:

- On 22 October 1993, Deputy Commandant J.K. Rodala, along with eleven others went to Bijbehara town.
- In anticipation of a BSF convoy that was to pass through the area, and seeing the large crowds gathered, Deputy Commandant J.K. Rodala asked SI Malhar Singh to tell the crowd to disperse. At this point, 2-3 persons in the crowd pounced on "CT Sajesh MV". Then, there was gunfire from an AK-47 and SI Malhar Singh was injured on his right shoulder. Some members of the crowd then tried to grab his weapon. At this point, a "few rounds" were fired by the troops in self-defence.
- The findings of the enquiry magistrate are incorrect.
- The General Security Force Court acquitted all the alleged perpetrators.

In addition, other BSF personnel also filed their affidavits before the High Court and stated that "actions taken by them were in the official discharge of their duties and had due sanction of law".

On 10 September 2007 the High Court delivered its final decision and granted Rs. 4,00,000 each to the petitioners. The Government of Jammu and Kashmir and Jammu and Kashmir Police filed a Letter Patent Appeal [LPA no. 69/2009] against the 10 September 2007 order²⁷.

Further, it is reported that the National Human Rights Commission [NHRC] filed a petition before the Supreme Court seeking that the findings of the General Security Force Court be made public. This petition was subsequently withdrawn²⁸.

As a copy of the findings of the General Security Force Court is not on record, the only documents that may be considered for the purpose of analysis are the Magisterial enquiry report of 13 November 1993 and the final order of the High Court of 10 September 2007.

The Magisterial enquiry report submitted on 13 November 1993 clearly indicts the security forces in the killing at Bijbehara. The conclusions of the report are as follows:

- "On 22 October 1993 a procession of 2000 to 3000 people was taken from Jamia Masjid Bijbehara against Hazratbal siege. The procession was entirely peaceful and un-armed. There were no armed militants amongst the demonstrators.
- It has been established beyond any shadow of doubt that firing upon the procession was absolutely un-provoked and the claim made by the security forces that they were forced to retaliate the firing of militants for self defence is baseless and concocted.
- The enquiry conducted falsifies the assertion of the BSF personnel that total 51 bullets were fired by them. Actually, besides the cold blooded killing of 31 persons some 73 persons were injured.
- There were no casualties from the BSF side and which conclusively establishes the fact that there was no firing from the side of the processionists and there was no militant or armed person in the crowd.
- The security forces personnel have committed offence out of vengeance and their barbarous act is deliberate and well planned"

The report continues to state that "the role of Deputy Commandant Shri J.K. Rodala in the whole

27 Information on the petition numbers was sought through RTI on 16 February 2012. Information was provided. Further information was sought through RTI dated 15 July 2015.

28 Times of India, http://articles.timesofindia.indiatimes.com/2002-07-06/india/27302159_1_nhrc-national-human-rights-commission-case, 6 July 2002.

incident is equally culpable because of tacit approval given by him to the indiscriminate and un-provoked firing.” The report then recommends the immediate dismissal of alleged perpetrators 2 to 12 listed above and the initiation of criminal proceedings against them and refers to the alleged perpetrators as “malignant and sick minded individuals”. The report therefore clearly indicts the BSF and alleged perpetrators 2 to 12 in the Bijbehara incident²⁹. The enquiry report while also indicting Deputy Commandant J.K. Rodala does not refer to him firing into the air, the signal that appears to have begun the firing. Nonetheless, the enquiry report serves as a clear indictment against him as well due to his tacit approval and considers him equally culpable as the others.

While the BSF, before the High Court, did not accept the findings of the Magisterial enquiry report, the High Court in its 10 September 2007 order did affirm the findings. The following are the relevant conclusions of the High Court:

- The plea taken by the DIG BSF, of there being a provocation for the firing, is contradicted by the affidavits of the BSF personnel.
- Though the DIG BSF states that SI Malhar Singh received a bullet injury no medical certificate indicating the same was placed on record.
- There is sufficient material on the record to support the version of events put forward by the petitioners. Particularly, the enquiry report of 13 November 1993.

Based upon the above, the High Court concluded that “these facts sufficiently show that the BSF personnel on duty opened fire on the mob without any provocation or cause. The procession was entirely peaceful and unarmed and there is no evidence of the presence of any armed militants in the mob. Thus there was no justification to kill these persons who were closely related to the present petitioners.” Based on its conclusions the High Court ordered compensations of Rs. 4,00,000 to each of the petitioners in addition to the ex-gratia government relief already granted to them.

The High Court and the enquiry report clearly indict the BSF. As the affidavits of the BSF personnel are not presently with the IPTK it is unclear how they contradict with the position of the DIG BSF, but the indictment of the High Court remains unequivocal.

While submissions before the High Court suggest that the case against the BSF personnel has been sent for sanction, the Government of Jammu and Kashmir, in response to information sought through the Jammu

and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], on 6 September 2011 does not refer to this case. The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided. Therefore, the present status of sanction is not known.

Therefore, it would appear that investigations in the case had in fact not been carried out or completed. It needs to be ascertained on whose directions the police have not carried out or completed the investigations in a case where the Magisterial enquiry and the High Court have indicted the alleged perpetrators. The Magisterial enquiry now appears to have been rendered redundant by the inaction of the Government.

Case No. 32

Victim Details

Mushtaq Ahmad Bhat [Abduction and Extra-Judicial Killing (Custodial Killing)]
Son of: Aziz Mohammad Bhat
Resident of: Honjala Tehsil, Kishtwar, Doda District

Alleged Perpetrators

1. Captain T.K. Chopra, 15 PBOR [Accounts office], 10 Jammu and Kashmir Rifles, Army
2. Captain Pushpinder, 15 PBOR [Accounts office], 10 Jammu and Kashmir Rifles, Army

Case Information

The victim was killed in custody on 3 November 1993.

First Information Report [FIR] no.181/1993 u/s 364 [Kidnapping/Abducting to murder], 302 [Murder], 34 [Common intention] Ranbir Penal Code, 1989 [RPC] was filed at the Kishtwar Police Station³⁰. The FIR filed by Abdul Rashid Bhat stated that an unidentified dead body was found with bullet injuries in the face and head, and torture marks, near Chermali, Pooncha, Kishtwar. The 24 November 2011 communication from the Jammu and Kashmir Police states that the investigation was with the Crime Branch. By communication dated 29 April 2014 from the Jammu and Kashmir Police information was

²⁹ The report does not fully name “K.Singh, L.N.K., no. 84744051” but does refer to his designation, his first initial “K” and his number.

³⁰ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 24 November 2011 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. By communication dated 24 November 2013 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI dated 14 November 2014.

provided that the case was transferred to Crime Branch, Jammu in 1995, “where from reportedly the case has been sent to Home Department for government sanction for launching prosecution against the accused”. Further, it was stated that a communication dated 25 April 2014 had been sent from Deputy Superintendent of Police [DSP], Kishtwar, to Senior Superintendent of Police [SSP], Crime Branch, Jammu, to furnish the case diary and chargesheet. On the issue of the present status of the case, it was stated that SSP, Crime Branch, Jammu by communication dated 25 April 2014 had intimated that the sanction was still awaited. By communication dated 6 February 2015 the status is the same – the file is lying with the Crime Branch.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that the case was under consideration for the alleged perpetrators.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction was sought on 1 April 2010 and was awaited for the alleged perpetrators.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir 17 years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

Further, for over two years, the Ministry of Defence has failed to take a decision on whether to grant sanction for prosecution under AFSPA for the alleged perpetrators. The available documents do not suggest that even a court-martial was conducted in this case by the army.

Case No. 33

Victim Details

Reyaz Ahmad Bhat [Abduction, Torture and Extra-Judicial Killing (Custodial Killing)]

Age: 21

Occupation: 2nd year Bachelor of Sciences student / Assistant at a private clinic for 29 days prior to being killed

Son of: Mohammad Rajab Bhat

Resident of: Iqbal Colony, Baramulla Town

Alleged Perpetrators

1. Major D.P.Singh [Operational name: Tiger], 15 Punjab Regiment, Army, Camp Filtration Plant, Bagh-e-Islam

Case Information

On 24 November 1993 at around 1:00 pm Reyaz Ahmad Bhat was picked up by Major D.P.Singh travelling in a jeep with some other soldiers. Reyaz Ahmad Bhat was then taken to the Filtration Plant Camp, Bagh-e-Islam.

On the following day, the father of Reyaz Ahmad Bhat went to the camp, police station and the office of the Deputy Commissioner [DC], Baramulla. This was because people in the area had heard cries of torture from the camp on the night of 24 November 1993.

On 25 November 1993, the head of the locality had met Major D.P.Singh who denied Reyaz Ahmad Bhat was with him.

Reyaz Ahmad Bhat was killed during torture and his clothes had been found at a stream close to the Filtration Plant Camp. The family states that the DC, Baramulla persuaded the army to hand over the body to the Baramulla Police Station. The family of Reyaz Ahmad Bhat received the body on 26 November 1993. The body bore severe torture marks. The stomach of the victim had been opened, filled with grass, and then stitched back.

Four days after the killing of Reyaz Ahmad Bhat, Major D.P.Singh, an unidentified Colonel and others came to offer money to the family of the victim but this was refused.

The family received Rs. 1,00,000 in ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders].

The family of Reyaz Ahmad Bhat gave a statement to the IPTK on 30 December 2011.

First Information Report [FIR] no. 361/1993 u/s 302 [Murder], 342 [Wrongfully confining person] Ranbir Penal Code, 1989 [RPC] was filed at the Baramulla Police Station. The 22 May 2012 communication from the Jammu and Kashmir Police stated that the case was under investigation. A separate RTI was filed regarding all FIRs against State forces in Jammu and Kashmir. By communication dated 25 December 2013 from the Jammu and Kashmir Police a copy of the FIR was provided and information that sanction for prosecution was awaited.

A letter dated 24 June 1997 to the DC, Baramulla from the Senior Superintendent of Police [SSP], Baramulla, confirms that Reyaz Ahmad Bhat was not involved in any subversive activities. Previous to this communication, a letter dated 30 April 1997 from the SSP, Baramulla to the DC, Baramulla, refers to Reyaz Ahmad Bhat as “innocent” and strongly recommends that compassionate employment under SRO-43 [Statutory Rules and Orders] be provided to his family.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was not received.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction was sought on 11 September 1996 and was awaited.

By letter dated 8 December 1993 the District Magistrate, Baramulla informed the father of Reyaz Ahmad that a Court of Inquiry had been constituted by the 19th Infantry Division and he was to attend and provide his evidence between 4 and 10 December 1993.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir took three years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

Further, the available documents do not suggest that a court-martial was conducted in this case by the army.

There appears to be something seriously wrong in the manner in which sanctions for prosecution under AFSPA are sought. The Jammu and Kashmir Government states that sanction was sought after the conclusion of the investigations. The Ministry of Defence states they have not received the case. Jammu and Kashmir Police, nineteen years after the incident, claims investigations are ongoing, only to later confirm that sanction was awaited.

Case No. 34

Victim Details

Sheikh Mohammed Maqbool [Extra-judicial killing]
Son of: Maulvi Hafizullah
Resident of: Dhani, Karnah, Kupwara district

Alleged Perpetrators

1. Major GS Gill, 8 Sikh Regiment
2. Havaldar Harbhajan Singh, 8 Sikh Regiment

Case Information

On file is FIR no. 51/1994 under section 302 [murder] Ranbir Penal Code [RPC] at PS Karnah dated 18 June 1994. The FIR states that the victim was taken on 30 December 1993. At 9 am on 30 December 1993, the victim was sent a message saying that he was needed at Khushal picket. Accordingly, he went along with the Numberdar, Abdul Latief, Chowkidar Khadim Sheikh and Azmatullah Shah. He had been picked up in

relation to a mine blast on 18 December 2013. When the victim was being taken, on the way, he made a diversion. Havaldar Harbhajan Singh threatened him and said he would shoot him if he continued. Then Harbhajan Singh fired at him. Due to the firing, he was killed. Recovery was made of two grenades from his house. A post-mortem was conducted and s.161 statements were taken.

Information on this FIR was sought through RTI dated 15 October 2013. By communication dated 24 December 2013 a copy of the FIR was provided. Further, information was provided that the case was investigated by the Crime Branch, Srinagar and the case file had been submitted to ZPHQ for accord of government sanction through Crime Branch Srinagar vide letter no. CR-R-51/94/98-5523 dated 13 March 1998. The casefile has not been received back from ZPHQ yet.

A separate RTI was filed on 18 December 2012 to Jammu and Kashmir Police regarding custodial killings in Jammu and Kashmir between 1989 and 2012. By communication dated 4 January 2013 information was provided that the case was closed as chargesheeted against both the alleged perpetrators and sanction was awaited.

Therefore, while it appears that the police have found against the alleged perpetrators, there has been no progress because of the sanction procedure.

Case No. 35

Victim Details

Mohammad Abdullah Dar [Torture, Extra-judicial killing]
Son of: Haji Asad Dar
Resident of: Shah Gund, Hajin, Bandipora district

Alleged Perpetrators

1. Rashid Manda, Government gunman [Ikhwan]
1. Hozoor Dar, Government gunman [Ikhwan]
2. Ahad Manda, Government gunman [Ikhwan]
3. Ghulam Nabi Manda, Government gunman [Ikhwan]

Case Information

Sometime after 2 pm on 12 January 1994, Ikhwans of the area Shah Gund, Hajin, headed by Rashid Manda, and including Hozoor Dar, Ahad Manda and Ghulam Nabi Manda, raided the house of the victim in civilian clothes and broke everything including the door, windows, the television and looted ornaments of the women. Rashid Manda was working with the Indian army along with other government gunmen. He was in search of the victim.

The family hid the victim in the house of their next-door

neighbor namely Abdullah Rather. Two villagers of Shah Gund, Sanaullah and Abdul Rashid Dar, took him to the house of Abdullah Rather. However, the Ikhwan Rashid Manda still searched for the victim and after sometime, the Ikhwans came to know the location of Abdullah Dar. After a half-an-hour search, they dragged the victim into the shop of one Mohammad Sultan Rather, and tortured him brutally. During this torture, the internal organs of the body of the victim oozed out. Ikhwans left the place thinking that Abdullah was dead but he was still breathing. The family got him home where he died in front of his wife and daughter.

The son of the victim, Nasir Abdullah, gave the above statement to the IPTK on 1 May 2015.

The witness statement is clear, and cogent evidence is presented of the torture by the alleged perpetrators. The allegations warrant further investigation.

Case No. 36

Victim Details

Mohammad Yunis Khan [Extra-Judicial Killing]
Son of: Hakim Ali
Resident of: Mariyan, Kamalkote, Uri, Baramulla District

Alleged Perpetrators

1. Havaladar Jagdesh, 5 Rajputana Rifles, Army
2. Havaladar Madan Singh, 5 Rajputana Rifles, Army
3. Naib Subedar Dalu Ram, 5 Rajputana Rifles, Army

Case Information

On 18 January 1994 Mohammad Yunis Khan was killed.

First Information Report [FIR] no.80/1994 u/s 302 [Murder] was filed at the Uri Police Station³¹. By communication dated 22 May 2012 from the Jammu and Kashmir Police it was stated that the case was closed as by declaring the perpetrators as untraced. Further, that the FIR was misplaced. By communication dated 30 November 2013 from Jammu and Kashmir Police a copy of the FIR was provided. The FIR was filed on 30 July 1994 after a communication from Superintendent of Police [SP], Baramulla. The FIR lists the incident as taking place on 19 January 1994. A separate RTI was filed regarding FIRs against the State forces in Jammu and Kashmir. By communication dated 25 December 2013 from the Jammu and Kashmir

Police a copy of the closure report was provided. But, the communication states that the case was under investigation. By separate communication dated 22 April 2014 from the Jammu and Kashmir Police once again a copy of the FIR was provided and a document as a part of investigations. By communication dated 6 January 2015 information was provided that the case was closed as untraced on 15 June 2010 and submitted before the court on 6 July 2011. By communication dated 6 January 2015 information was provided that confirms the above status.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was under consideration.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under AFSPA, stated on 6 September 2011 in relation to this case that sanction was declined on 15 March 2010.

It is noteworthy that it took the Jammu and Kashmir Police, Government of Jammu and Kashmir and the Ministry of Defence 16 years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice. No reasons are on record for the decline of sanction for prosecution.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Finally, the Jammu and Kashmir Police has inexplicably closed the case by declaring the perpetrators as untraced, presumably after the decline of sanction for prosecution, without agitating the matter. Further, it needs to be investigated why the FIR was misplaced and whether this was a case of gross negligence or an attempt to cover up.

Case No. 37

Victim Details

Mohammad Azad Khan [Extra-Judicial Killing]
Occupation: Teacher, Education Department
Son of: Sattar Ali Khan
Spouse: Reshan Bee
Resident of: Kamalkote, Uri, Baramulla District

Alleged Perpetrators

³¹ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

1. Major A. K. Abbot, 4th Sikh Regiment, Army
2. Subedar Gurmail Singh, 4th Sikh Regiment, Army

Case Information

Mohammad Azad Khan was killed in custody by the alleged perpetrators on 8 July 1994.

First Information Report [FIR] no. 76/1994 u/s 306 [Abetting suicide] Ranbir Penal Code, 1989 [RPC] was filed at Uri Police Station.³² The FIR was filed on 20 July 1994. The victim was tortured ruthlessly. At the instance of the personnel of the 4th Sikh army the victim did what was asked of him during his detention. No recovery was made from him and he was innocent. Finally, due to the circumstances, he committed suicide in the Jhelum river at the place called Jhoola. Then he was fired upon.

The family of the victim filed a complaint before the State Human Rights Commission [SHRC] on 11 September 2008. The SHRC issued its final decision on 23 November 2009 and recommended Rs.1,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders].

For the purposes of analysis, the only document available with the IPTK is the SHRC decision of 23 November 2009.

The SHRC received a report from the Director General of Police [DGP], Jammu and Kashmir dated 30 May 2009 that confirmed that the victim was abducted on 8 July 1994 by the 4th Sikh Regiment, and subjected to severe torture while in custody. The victim was taken along by the army personnel towards Gohala bridge, Uri, [this is probably a typographical error by the SHRC, and in fact it would be "Jhoola"] where "reportedly" he jumped into the Jhelum river and drowned. The army personnel did not rescue him. During investigations, offences u/s 302 [Murder], 201 [Causing disappearance of evidence/giving false information] Ranbir Penal Code, 1989 [RPC] were established against Major "A.K. Abot" and Sobedar "Gurmail Sing" of the 4th Sikh regiment. The family of the victim filed a rejoinder before the SHRC and denied that the victim had jumped into the Jhelum river.

The SHRC confirmed, based on the police report, the abduction and severe torture of the victim, but did not make any observations on the death of the victim. The SHRC decision, and primarily the DGP report of 30 May 2009, serves as an indictment of the alleged perpetrators. But, it is unfortunate, that the SHRC did not pass any observations on the family of the victim's objections to the police report version relating to the

victim jumping into the Jhelum river.

The final detail to be considered is from the sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] documents in relation to this case.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that the case was under consideration. But, only the name of Major A. K. Abbot is mentioned.

Further, the victim is referred to as a militant and it is stated that the victim "managed to jump in Jhelum river while being escorted and killed by firing". But, the Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under AFSPA, on 6 September 2011 makes no mention of this case. But the police state that the case is still under investigations. The Ministry of Defence, despite the passage of 18 years from the crime, is further delaying the processes of justice by not taking a decision on the issue of sanction for prosecution under AFSPA. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 38

Victim Details

Reyaz Ahmad Wani [Torture and Extra-Judicial Killing (Custodial Killing)]

Age: 20

Resident of: Bhatnoor village, Pulwama District

Alleged Perpetrators

1. Captain Sharma, 22nd Battalion, Grenadiers, Army
2. Mushtaq Ahmad Ganaie, Informer, 22nd Battalion, Grenadiers, Army

Case Information

On 13 September 1994, the personnel of 22nd Battalion Grenadiers, commanded by Captain Sharma, cordoned the Bhatnoor village. Mushtaq Ahmad Ganaie, acting as an informer, accompanied Captain Sharma. The soldiers entered the residential houses and beat many elderly people and insulted the women of the village. Further, the residents of the village were assembled at a place, an identification exercise was carried out, and during this process the victim was picked up and beaten mercilessly due to which he died on the way to the hospital.

³² Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. No information was provided. Further information sought through RTI on 15 October 2013. By communication dated 30 November 2013 from Jammu and Kashmir Police a copy of the FIR was provided. By communication dated 22 April 2014 from the Jammu and Kashmir Police information was provided that the case was still under investigation, and certain investigation related documents were provided.

First Information Report [FIR] no. 112/1994 u/s 302 [Murder], 354 [Assault/Criminal force to a woman with intent to outrage modesty] Ranbir Penal Code, 1989 [RPC] was filed at the Pulwama Police Station³³. During the investigations, a post-mortem was carried out. Following the investigations, a chargesheet was filed before the Chief Judicial Magistrate [CJM], Shopian on 17 April 1996 against Mushtaq Ahmad Ganaie, who then committed the case on the same day to the Sessions Court, Pulwama. Following further proceedings, including a High Court of Jammu and Kashmir order of 4 September 1996, the case was tried before the 4th Additional District Judge, Srinagar. On 23 September 2003, Mushtaq Ahmad Ganaie was convicted u/s 302 [Murder], 323 [Punishment for voluntarily causing hurt], 34 [Common intention] Ranbir Penal Code, 1989 [RPC], and sentenced to life imprisonment and fined. The case was referred to the High Court, Srinagar Bench for confirmation of the sentence.

The proceedings, if any, against Captain Sharma are not available on record. But, what is certain, based on official documents released by the State and Central Governments, is that the case relating to Captain Sharma was never referred for sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], and neither has any information been made available by the Indian army on whether Captain Sharma was court-martialled.

The 23 September 2003 judgment of the trial court is the only document on record that may be analysed.

Below is a summary of the relevant evidence led during trial [unfortunately, the judgment does not detail the names of the witnesses]:

- Prosecution Witness [PW] 1, stated that he knew Mushtaq Ahmad Ganaie, the army informer and Reyaz Ahmad Wani. On 13 September 1994, an army contingent under the command of Captain Sharma laid siege to the village in the early hours and the residents were ordered to assemble near the *Ziyarat Sherif* [shrine] of the village. An identification parade was held during which Mushtaq Ahmad Ganaie identified Reyaz Ahmad Wani. Captain Sharma and Mushtaq Ahmad Ganaie took Reyaz Ahmad Wani for interrogation to a nearby tree. After sometime, the witness heard Reyaz Ahmad Wani “crying” that he was not a militant. But the alleged perpetrators continued to beat him. The interrogation continued for about two and a half hours. The witness, father of Reyaz Ahmad Wani [PW 2], and two others [PW 6 and 7] went to the alleged perpetrators and begged them to stop beating

Reyaz Ahmad Wani and set him free. But, the request was not accepted and Reyaz Ahmad Wani continued to be beaten with sticks while he was hanging “with” the tree. The mother of Reyaz Ahmad Wani also intervened but she was kicked away and the father of Reyaz Ahmad Wani was beaten. After sometime, Captain Sharma called them [presumably including the witness] and asked them to take away Reyaz Ahmad Wani, who was half dead. Following a visit to the village doctor, and on the way to a hospital in Srinagar, Reyaz Ahmad Wani died. The army had taken the sticks and rope with them. On cross-examination, the witness clarified that he had seen Reyaz Ahmad Wani being beaten with his own eyes. No damage to the witness testimony appears to have been done on cross-examination.

- PW 2, father of Reyaz Ahmad Wani, stated that on the morning of 13 September 1994, the army had laid siege to the village. An identification parade was carried out near the *Ziyarat Sherif* [shrine] at the village. The army was led by Captain Sharma and accompanied by Mushtaq Ahmad Ganaie, an informer. During the identification Reyaz Ahmad Wani was picked up by Mushtaq Ahmad Ganaie and taken for interrogation. Subsequently, the witness heard the cries of Reyaz Ahmad Wani as he was tied to a tree and beaten with sticks by the alleged perpetrators. The witness and his wife sought to intervene and asked that Reyaz Ahmad Wani not be beaten but their request was not given heed to. The witness stated that Mushtaq Ahmad Ganaie was “pulling the private part” of Reyaz Ahmad Wani. Subsequently, the rope by which Reyaz Ahmad Wani was tied to the tree was removed. Reyaz Ahmad Wani was taken to the village hospital, and then on the way to a Srinagar hospital he died. During cross-examination, the witness stated that the army troops, and Mushtaq Ahmad Ganaie, were acting under the command of Captain Sharma. No damage to the witness testimony appears to have been done on cross-examination.

- PW 3, the Lambardar [Numberdar, de facto revenue authority in the village] of Bhatnoor village, stated that at 6:00 am on 13 September 1994 the army personnel led by Captain Sharma cordoned the village. An identification parade was carried out to identify militants and Mushtaq Ahmad Ganaie identified Reyaz Ahmad Wani. Subsequently, the witness heard the cries of Reyaz Ahmad Wani as he was being beaten by both alleged perpetrators. The witness further stated that the father of Reyaz Ahmad Wani “went near the police where the deceased was being beaten up and saw the deceased having been kept hanging with a tree by the accused and the army personnel who were beating him up”. After

33 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. By communication dated 25 July 2012 from the Jammu and Kashmir Police a copy of the FIR and other investigation documents were provided and information was provided that a chargesheet was produced in court on 17 April 1996 and the case remain sub-judice

this, both alleged perpetrators brought Reyaz Ahmad Wani to his house in a half dead condition. Reyaz Ahmad Wani was taken to the village hospital, and then on the way to a Srinagar hospital he died. Reyaz Ahmad Wani was not connected in any way to militancy. On cross-examination, the witness stated that they were not allowed to go to the place where Reyaz Ahmad Wani was being beaten, but the father of the victim had gone there and he informed them on what was happening. The victim was brought back to his house at about 3:00 pm.

- PW 5, stated that on 13 July 1994 the army had cordoned the village and the people were asked to assemble at a place near the *Ziyarat Sherif* [shrine] of the village. An identification parade was conducted and the victim was picked up by Mushtaq Ahmad Ganaie, who was accompanying the army, and was taken for interrogation by both the alleged perpetrators. Reyaz Ahmad Wani was tied to a tree and they heard cries of the victim. The alleged perpetrators were beating Reyaz Ahmad Wani with sticks. When the mother and father of Reyaz Ahmad Wani sought to intervene, his father was also beaten up. Subsequently, PW 2 and 3 were asked to take Reyaz Ahmad Wani away. Reyaz Ahmad Wani was taken to the village hospital, and then on the way to a Srinagar hospital he died. On cross-examination, the witness maintains that he saw the victim being beaten.
- PW 6, the brother of Reyaz Ahmad Wani states that he saw the “dead body” of his brother kept in the compound of his house. No damage to the witness testimony appears to have been done on cross-examination. The witness also stated that the family had received the ex-gratia compensation.
- PW 8, is the witness on the seizure memo and it was in his presence that the dead body of Reyaz Ahmad Wani was taken by the police. The witness stated that there were injuries on the body of Reyaz Ahmad Wani, except his head.
- PW 10, the doctor who examined Reyaz Ahmad Wani at the village, confirms that the victim had suffered injuries that could be caused by sticks.
- PW 11 and 12 conducted the post-mortem on the dead body of Reyaz Ahmad Wani. They noted injuries on the body and noted that Reyaz Ahmad Wani had died due to “sustained torture”. PW 12 stated that all injuries were inflicted within twenty four hour duration.
- PW 13, the person investigating the crime provided details of the investigation.
- PW 14 and 15 are also of the police but their testimonies need not be recounted here.
- Defence witness [DW 1], Assistant Commissioner in the office of the Development Commissioner at the relevant date, stated that during the processing of the ex-gratia government relief case, the parents and other witnesses had stated that Reyaz Ahmad Wani had died due to

gun fire. These statements were subsequently tampered and the reference to gun fire was substituted with a reference to Reyaz Ahmad Wani having died due to being beaten.

- DW 2 stated that on 9 September 1994 the father and elder brother of Mushtaq Ahmad Ganaie [the army informer] were kidnapped by unidentified persons and later the dead body of the father was found. The brother of Mushtaq Ahmad Ganaie was killed on 9 September 1994. Mushtaq Ahmad Ganaie remained in his house for four days of mourning.
- DW 3, Mushtaq Ahmad Ganaie, stated that on 9 September 1994 at about 10:30 pm his father and elder brother were kidnapped. The body of his father was found the next day and his brother's body was found on 14 September 1994. From 9 September 1994 to 16 September 1994, Mushtaq Ahmad Ganaie remained at his house at village Chandgam, Pulwama. In cross-examination, he denied working with the army or with Captain Sharma.

The court considered the above evidence and the arguments of the counsel of the accused who appeared to limit himself to the issue of intent based on the reasoning that as the head of the victim was not targeted there was no intent to kill him. But, considering the other injuries, the court found that intent to kill was established. Further, the alibi plea was considered by the court to be an afterthought and was not accepted.

Before analysing the judgment of the court, a few points need to be made:

- It is unclear who PW 4, 7 and 9 were and what they testified. The judgment does not refer to them.
- PW 5 puts the date of the incident in July 1994, but this may well be a typographical error not attributable to the witness.
- There is a question to be considered on which witnesses actually saw the alleged perpetrators beat the victim. PW 2 testified that only the father went and saw what happened with the victim. But, this contradicts with PW 1 and PW 5 who also claimed to have seen the beating of the victim.
- It is unclear how the witnesses were able to identify the alleged perpetrators. No details are provided on the basis of their knowledge of the identity of the persons involved.
- None of the witnesses refer to the unit of the army involved in the operation, whereas the prosecution case referred to the 22nd Battalion Grenadiers.
- The issue of the change of statements during the ex-gratia government relief process, and the issue of whether the witnesses had spoken about the victim dying of gun fire, does not appear to have been adequately dealt with by the court.

But, notwithstanding the above points, the guilt of both

the alleged perpetrators appears to have been soundly established by the evidence. The injuries to the victim, his death, the identification of the persons involved in the operation and the beating/torture itself appears to be based on reliable evidence. It is therefore unfortunate that while Mushtaq Ahmad Ganaie has been strongly indicted by this judgment along with Captain Sharma [particularly as evidence was led on how Captain Sharma was in command], it is only Mushtaq Ahmad Ganaie that has possibly been imprisoned. The status of investigation and prosecution against Captain Sharma is unclear based on the available documents.

As the culpability of alleged perpetrator no.1 is in fact greater than Mushtaq Ahmad Ganaie, therefore it is expected that Captain Sharma was also punished either by court-martial or in a separate trial by the criminal court for which prosecution sanction under AFSPA should have been sought. The official documents from the Ministry of Defence on sanction for prosecution under AFSPA do not list this case. Further, this case is not listed in the official documents from the Ministry of Defence on court-martials conducted. Therefore, an inference could be drawn that Captain Sharma has not been prosecuted either by court-martial or a criminal court thereby ensuring absolute impunity for Captain Sharma.

Case No. 39

Victim Details

Two persons [Identity not ascertained] [Extra-Judicial Killing (Custodial Killing)]

Alleged Perpetrators

1. Major Depankar Sahai, Army

Case Information

As per information from the Ministry of Defence, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 10 January 2012 that on 22 March 1994 the victims were killed in custody. FIR no.61/1994 was filed. The case was under examination.

No information exists on the status of investigations or prosecutions in this case by the Jammu and Kashmir Police.

But, it is noteworthy that despite the passage of 18 years since the commission of the crime, the Ministry of Defence has yet to take a decision on the grant of sanction for prosecution under AFSPA which helps the perpetrators in evading justice.

Further, the available documents do not suggest that

even a Court-Martial was conducted in this case by the army.

Case No. 40

Victim Details

Mushtaq Ahmad Mir [Extra-judicial killing]

Age: 28

Occupation: Carpet Weaver

Son of: Mohammad Akbar Mir

Resident of: Chaksari, Warpora, Pattan, Baramulla district

Alleged Perpetrators

1. Mohammad Ramzan Mian alias Hayat Khan, resident of Pattan, Commander, Government Gunman [Muslim Mujahideen] [deceased]
2. Salim, resident of Alibagh, Sopore, Government Gunman [Ikhwan]
3. Mohammad Akbar, resident of Alibagh, Sopore, Government Gunman [Ikhwan]
4. Mohammad Yusuf Dar, resident of Chaksari, Warpora, Pattan, Government Gunman

Case Information

Abdul Rashid Mir was the victim's elder brother; he was associated with the Hizbul Mujahideen. On 19 January 1993, he was caught in an encounter with the army, upon the revelation of his hideout by another militant Irshad, who was caught and tortured by the army. When his ammunition finished, at around 6 pm, he was caught and tortured by the army and then killed on the spot. During the encounter, the village gathered around the area where this was happening, and then the army indiscriminately shot at the villagers, in which the victim's brother-in law, Abdul Gani Bhat, was killed. After this incident, the army regularly started visiting the victim's home, sometimes thrice a day, and started to harass them.

Then, on 14 July 1994, the victim and his sister-in-law, Jana, were working in their fields, around 1.5 km away from their home, when government gunmen – alleged perpetrators 1-3 as witnessed by Jana - came to their field and captured the victim at around 7:30 pm in the evening. He was then taken via Shirpora to Pattan. At about 9:30 pm, he was shot dead according to his family. At around 7 am the next morning, officers from police station Pattan came to their home with the dead body and informed the family that they had found the dead body in Pattan area on the roadside. The family of the victim did not file a First information Report [FIR] as the police had already themselves lodged an FIR. Six days after the incident, the family was forced to move out of Chaksari. They were chased out by all four of the alleged perpetrators.

The family was given ex-gratia government relief and Statutory Rules and Order 43 [compassionate employment].

The family member of the victim, Khursheed Maqbool Mir, gave the above statement to the IPTK on 9 June 2015.

The police filed the FIR no. 183/1994 under sections 302 [murder] RPC and sections 25/27 Arms Act. It stated that the victim, Mushtaq Ahmad Mir son of Mohammad Akbar Mir, resident of Chaksari; and Mohammad Akbar Bhat, son of Ghulam Mohammad Bhat, resident of Mohalla Jamia, Pattan were killed by unidentified forces and their bodies were found in Pattan. Further information on this FIR was sought through RTI dated 15 July 2015.

The witness statement is clear, and cogent evidence is presented of the killing of the victim. The allegations warrant further investigation. The status of the FIR needs to be ascertained and Jana forms a very important part of the case as she is an eye-witness of the abduction of the victim.

Case No. 41

Victim Details

Ghulam Mohammad Shah [Abduction, Torture, Extra-judicial killing]

Age: 22

Occupation: Hizbul Mujahadeen [1991-1994]

Son of: Abdul Rasheed Shah

Resident of: Biner, Baramulla district

Alleged Perpetrators

1. Major DP Singh, 15 Punjab Regiment, Filtration Camp, Baramulla

Case Information

On 21 September 1994, there was a crackdown in the area called Duniwara, Baramulla. At about 8 pm, when the crackdown got over, the army came through the village of Biner, which is 4 kilometers away from Duniwara. The army was on foot. When they passed through village Biner, Ghulam Mohammad was on the road near a shop. When he saw the army, he tried to escape but army caught him. Only he was picked up, as the army suspected him because of his long beard. The army frisked him and they found a grenade with him. He was taken to the 15 Punjab army camp, Filtration camp, Baramulla. In the camp, the army killed him and dropped his body at Janbazpora, 2 kilometers away from the camp.

The next day, the police found the dead body there and handed it over to the family. When the family saw the dead body, there were torture marks on his both wrists and ankles. His beard had been removed and his teeth were broken as well. Later, the family came to

know through the locals of the village that Major DP Singh had picked up the victim.

After two months, Ikhwan started harassing the family for the weapons of Ghulam Mohammad. This harassment continued for 2-3 years. The family couldn't identify any Ikhwan, as their faces were always covered. These Ikhwan would beat the family whenever they raided their house. The police have filed a First Information Report [FIR] but no compensation was given to family.

The father of the victim, Abdul Rasheed Shah, gave the above statement to the IPTK on 18 June 2015.

First Information Report [FIR] no. 245/1994 under section 302 [murder] Ranbir Penal Code [RPC] was filed at Police Station Baramulla. By communication dated 26 December 2013, in response to information sought on all FIRs related to custodial killings in Jammu and Kashmir, information was provided that the alleged perpetrator was responsible for the custodial killing of the victim. In addition, a copy of the FIR was provided. Further information was sought through RTI dated 14 November 2014. Under a separate RTI filed for all FIRs in Jammu and Kashmir against state forces, by communication dated 25 December 2013, a copy of the FIR was provided along with information that the case was closed as untraced on 7 March 1996.

The witness statement indicts the alleged perpetrators. But, the police investigations are contradictory. While in one response they state that the alleged perpetrator is responsible, in the other they state that the perpetrator cannot be traced. Either way, the army does not appear to have taken any action in this case and not even a court-martial was carried out.

Case No. 42

Victim Details

Mohammad Rafiq Shah [Tarray] [Abduction, Torture and Extra-Judicial Killing (Custodial Killing)]

Age: 16

Occupation: Student, Regional Public School

Son of: Salima Shah and Mehranj-ud-Din Shah [Tarray]

Resident of: Khankah Sokhta, Nawa Kadal, Srinagar

Alleged Perpetrators

1. Commandant Subhash Chandra Sharma [Operational name: Peter]³⁴, 7th Battalion Border Security Force [BSF]

Case Information

34 Subsequently killed on 16 April 1996 as reported by the BSF before the High Court.

On 30 January 1994 Mohammad Rafiq Shah was arrested by the 7th Battalion BSF at the Nawa Kadal main market, Srinagar. The family of Mohammad Rafiq Shah filed a report at the Safakadal Police Station. Subsequently, Mohammad Rafiq Shah was brought to his residence on a raid with his head covered.

The mother of Mohammad Rafiq Shah met him at the Hariniwas Interrogation Centre on six occasions [17 February 1994, 24 February 1994, 28 February 1994, 2 March 1994, 2 April 1994, 22 October 1994]. The father of Mohammad Rafiq Shah met him at Tatoo Ground Army Garrison and at another BSF Camp based at Mamta Hotel, Dalgate, Srinagar. But, after October 1994 the family was not allowed any further meetings. On 17 November 1994 the victim's dead body was recovered from the Dal lake. Commanding Officer Sharma threatened the family if they pursued the case.

The family of the victim gave a statement to the IPTK on 26 February 2012.

The post-mortem report of 20 November 1994 for Mohammad Rafiq Shah states that ropes were tied all over his body. Further, fractures on the body were also noted. The conclusion was that the victim had been strangled to death.

First Information Report [FIR] no.182/1994 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Ram Munshi Bagh Police Station on 21 December 1994³⁵. The communication dated 2 June 2012 provided a final report from the Ram Munshi Bagh Police Station that states that investigations were carried out in which the father of the Mohammad Rafiq Shah stated that the victim had been lifted by BSF personnel from Nawakadal, but the brother of the Mohammad Rafiq Shah stated that the victim was been abducted by unknown gunmen from Lal Chowk. The "BSF Para 2" was contacted, no response was received, and therefore the case was closed on 26 August 2006.

On 25 June 1999 the Safakadal Police Station confirmed that a report had been filed by the family of Mohammad Rafiq Shah after he had been picked up. Further, that the victim was not related to any militancy activities. A similar comment was also made by the police station in its letter of 8 May 2001. The Senior Superintendent of Police [SSP], Srinagar also confirmed the same in a letter dated 24 August 2001. But, it must be noted that the 8 May 2001 and 24 August 2001 letters refer to the dead body of Mohammad Rafiq Shah as having been found on 21 December 1994.

A petition was filed before the High Court of Jammu

and Kashmir [Original Writ Petition (OWP) 432/1997] seeking compensation of Rs. 25,000,00, ex-gratia government relief, compassionate employment under SRO-43 [Statutory Rules and Orders] benefits, and conclusion of investigations in the case and prosecution of all persons responsible.

The Government of Jammu and Kashmir of Jammu and Kashmir, Divisional Commissioner, Kashmir, and Station House Officers's [SHO] of Police Station's Ram Munshi Bagh and Safakadal jointly responded to the petition. It was stated that on 14 January 1995, the mother of the victim informed the investigating officer in the case that her son had been abducted by a BSF Inspector named Chaman Lal alias Kalia.

The investigation was transferred to SHO Ram Bagh Police Station who closed the case as untraced on 26 August 1998 [though at another point this date is entered as 26 August 1996] based on the fact that Forensic Science Laboratory [FSL] Jammu revealed that the photograph of the dead body did not match with the photograph provided by the mother of Mohammad Rafiq Shah.

The photograph of the dead body was that of a minor whereas the one submitted by the mother of the victim was that of an adult.

The Union of India, the BSF and the Commandant of 7th Battalion, BSF responded jointly. It was stated that the unit of the answering respondent was inducted in the Kashmir valley in May 1994. Therefore, the arrest of Mohammad Rafiq Shah could not have been carried out by them. Further, it was also stated that Commanding Officer Sharma was now deceased.

On 19 July 2007, the petition was dismissed for want of prosecution³⁶. The family of Mohammad Rafiq Shah received the ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders] benefits.

FIR no.182/1994 was filed by the Jammu and Kashmir Police more than a month after the death of Mohammad Rafiq Shah, which the FIR itself notes to have been on 17 November 1994.

Strangely, the letters on record of 8 May 2001 and 24 August 2001 by the Jammu and Kashmir Police contradict the date of death of Mohammad Rafiq Shah by placing it on 21 December 1994.

The contradictions of the Jammu and Kashmir Police continue with regard to the date of closure of the case. Three separate dates are provided: 26 August 1998 and 26 August 1996 before the High Court, and 26 August 2006 in response to the RTI by communication dated 2 June 2012.

35 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 2 June 2012 a copy of the FIR was provided.

36 Information on the petition numbers was sought through RTI on 16 February 2012. Information was received.

The non-seriousness of the Jammu and Kashmir Police can be further gauged by the fact that, according to the documentation provided with the 2 June 2012 communication, they were communicating with the “BSF Para 2” which did not appear to have any direct relationship with the case. Further, following non-cooperation from the “BSF Para 2”, a non-entity in the case, the Jammu and Kashmir Police chose to mechanically close investigations rather than aggressively seek the necessary cooperation for the conclusion of investigations.

The response of BSF before the High Court that Commanding Officer Sharma died on 16 April 1996 does not take away from the culpability of other personnel of the 7th Battalion BSF responsible for the abduction, torture and killing of Mohammad Rafiq Shah. It is unimaginable that Commanding Officer Sharma would have executed this crime alone.

Case No. 43

Victim Details

Ghulam Rasool Bhat [Extra-Judicial Killing]
Son of: Habib Bhat
Resident of: Wanpora, Gurez

Alleged Perpetrators

1. Assistant Commandant [DSP] Mohinder Singh, 33rd Battalion Border Security Force [BSF], Camp Madder
2. Havaldar Kasturi Lal, 33rd Battalion Border Security Force [BSF], Camp Madder

Case Information

First Information Report [FIR] no.101/1994 u/s 302 [Murder] was filed at the Bandipora Police Station on 3 August 1994³⁷. By communication dated 9 July 2012 from the Jammu and Kashmir Police information was provided that this case was closed as not admitted. Further, a copy of the FIR and chargesheet were provided. By communication dated 20 November 2013 from Jammu and Kashmir Police it was stated that the case was closed as not admitted on 10 August 2009, but a final report was not submitted before a court. The FIR states that at about 4:00 pm on 2 August 1994 a BSF party headed by a DSP stopped a bus and began checking it. The people in the bus were made to disembark. Ghulam Rasool Bhat was picked up and taken to Camp Madder and then to Sheikhpora where he was shot dead. Ghulam Rasool Bhat had also been tortured.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 in relation to this case that sanction was sought for the alleged perpetrators from the Ministry of Home Affairs but was declined on 21 February 2008.

It is noteworthy that it took the Jammu and Kashmir Police, Government of Jammu and Kashmir and Ministry of Home Affairs 14 years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

The IPTK sought information on 10 January 2012 on all inquiries and court-martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir. No information was provided.

Case No. 44

Victim Details

Mohammad Amin Bhat [Extra-Judicial Killing]
Age: 22
Occupation: Surrendered militant
Son of: Abdul Rahim Bhat³⁸
Resident of: Bhat Mohalla, Sangri Colony, Baramulla

Alleged Perpetrators

1. Subedar Gurnam Singh [Operational name: Tiger], 15th Punjab Regiment, Army, Baramulla Camp

Case Information

On 5 September 1994, Mohammad Amin Bhat was at his uncle, Mohammad Maqbool Bhat's house which was also in the Sangri Colony area. At about 4:30 am the army cordoned the entire area. They entered into the residence of Mohammad Maqbool Bhat and abducted Mohammad Amin Bhat. Then, at about 5:30 am gunshots were heard by the family of Mohammad Amin Bhat. Mohammad Amin Bhat had been arrested along with other people, including some of his relatives. They had been taken to the Kari Chamb hilltop, about 500 metres away from the residence of the victim. Some of the persons arrested along with Mohammad Amin Bhat confirmed that he had been shot dead.

The family of Mohammad Amin Bhat states that Subedar Gurnam Singh was responsible for the killing. The family of the victim believes that the reason for the

³⁷ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. Further information sought through RTI on 15 October 2013.

³⁸ The Government of Jammu and Kashmir, in response to information sought under the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 that the name of the father of the victim was Abdul Ahad Bhat. The family states that this is incorrect information.

killing of the victim was that Subedar Gurnam Singh had been given Rs. 10,000 by the family of a girl who the victim was involved with, to carry out the killing. This information was transmitted to the family by another person who had heard this from Subedar Gurnam Singh.

The family of the victim gave a statement to the IPTK on 29 December 2011.

First Information Report [FIR] no.229/1994 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Baramulla Police Station on 5 September 1994³⁹. The 22 May 2012 Jammu and Kashmir Police communication stated that the case was under investigation. A separate RTI was filed for all FIRs against State forces in Jammu and Kashmir. By communication dated 25 December 2013 from the Jammu and Kashmir Police a copy of the FIR was provided and information that the case had been chargesheeted and sanction for prosecution was awaited.

The family of Mohammad Amin Bhat did not receive any compensation despite applying to the Deputy Commissioner [DC], Baramulla for ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders]. The family believes it is because the army gave an adverse report against them.

On 12 October 1995 the Senior Superintendent of Police, Baramulla informed the DC, Baramulla, that the victim was not involved in any subversive activities for the last two years ever since he had surrendered [the victim was a militant earlier].

The family of Mohammad Amin Bhat also has a note dated 17 June 1991 from a Lieutenant Colonel of the army which informs the said Mohammad Amin Bhat to appear on that date and surrender. The family of the victim maintains that this proves that the victim had indeed surrendered.

The Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecutions under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 in relation to this case that sanction was sought on 11 September 1996 and was awaited.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir two years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

Despite a murder case against the army being filed

and sanction for prosecution under AFSPA being sought, the Jammu and Kashmir Government has been callous in not processing any compensation for the family of the victim.

Further, available documents from the Ministry of Defence do not mention this case at all, thereby suggesting that the case was never received on their end. Further, the available documents do not suggest that even a court-martial was conducted in this case by the army.

Finally, if, as the family of Mohammad Amin Bhat believes, the victim's killing was a result of personal animosity, the conduct of the Ministry of Defence suggests that even crimes committed by armed forces personnel outside their official duty continue to be shielded by AFSPA.

The shielding of Subedar Gurnam Singh in such cases of personal motivations behind crimes is another example of the institutional support to perpetrators.

Case No. 45

Victim Details

Ishtiyahq Ahmad Shah [Abduction, Extra-judicial killing]

Age: 18-20

Occupation: Student [B.A. I year] [he was affiliated to Ikhwan-ul-Muslimeen]

Son of: Mohammad Iqbal Shah

Resident of: Mominabad, Islamabad, Islamabad district

Ghulam Nabi Lone [Abduction, Extra-judicial killing]

Son of: Abdul Kabir Lone,

Resident of: Islamabad, Islamabad District

Alleged Perpetrators

1. Major Ravi Dewan, 2 Rashtriya Rifles [RR], Wuderhen Camp
2. Subedar Rattan Singh, 2 Rashtriya Rifles [RR], Wuderhen Camp
3. Major Yousuf Khan [operational name], 2 Rashtriya Rifles [RR], Wuderhen Camp

Case Information

At around 9 am on 7 September 1994, army cordoned the government quarters area of Leazbul, where the family of the first victim was staying. Ishtiyahq, along with his friend Ghulam Nabi Lone, was in the quarter. Ghulam Nabi had come to the quarter on that very morning to meet Ishtiyahq.

³⁹ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. A copy of the FIR was provided by a Jammu and Kashmir Police communication dated 22 May 2012.

It was 2 RR that had cordoned their quarter and picked up both Ishtiyag and Ghulam Nabi. The army were in large numbers. The witness is unaware as to whether the army knew about their affiliation with the Ikhwan-ul-Muslimeen or if they were picked up because of their affiliation.

They were taken to different rooms within the quarter and beaten and tortured in separate rooms. Ishtiyag was beaten in front of his mother; she saw the army cutting his skin with knives and giving it to the dogs, who had come along with the army. The mother, however, was unable to identify who was responsible for this.

It was Major Ravi Dewan, Major Yousuf Khan [operational name], and Subedar Ratan Singh who were in charge at that time; everything happened with their orders. The family knew them because they were in-charge of their town. They came from 2 RR at the Wuderhen Camp.

The army took away a lot of goods [electronics] that the family dealt with in their business.

They took Ishtiyag and Ghulam Nabi Lone to Mattan Chowk and dragged them round there. Then they were taken to Dak Bungalow, Khanabal for some time and then to the Khanabal Camp. Their dead bodies were later found the same day at 2:10 pm in Cheetar village, Islamabad.

In the village Cheetar, the inhabitants were threatened and forced to say that it was an encounter. The army stated that Ishtiyag and Ghulam Nabi had ambushed the army while they were on a search operation, due to which an encounter took place. The witness believes that a fake encounter was staged there.

On the 40th day of his death, personnel from 2 RR came to the house and picked up the witness. They said that a few militants had escaped and they were on the way to the house of the family. They tortured him and put a knife on his throat. His throat started bleeding and he started coughing up blood due to the beating. All those who had come for the 40th day ceremony witnessed this incident. He was bleeding by throat and mouth. It was some Singh Sahab, whose full name was probably J.D. Singh. He requested them not to kill him and they didn't.

The father of the first victim, Mohammad Iqbal Shah, gave the above statement to the IPTK on 24 April 2015.

A First Information Report [FIR] no. 289/1994 under sections 302 [murder], 342 [wrongful confinement] dated 7 September 1994 was filed at Anantnag Police Station. Information on this FIR was sought

through RTI dated 15 October 2013. By communication dated 16 November 2013 from Jammu and Kashmir Police a copy of the FIR was provided⁴⁰. By communication dated 16 May 2014 from the Jammu and Kashmir Police the following is stated: "The investigation of these cases stands closed as challaned. The CD files along with relevant documents and evidence both oral and documentary stand submitted to concerned quarters for accord of sanction to prosecute or otherwise, the case is under investigation and as such, it comes under the purview of section 6[b] of Jammu and Kashmir Right to Information Act, 2009". Further information sought through RTI dated 14 November 2014. By communication dated 18 December 2014 from the Jammu and Kashmir Police information was provided that the case was still with home department.

Before considering the above, also on record is a decision by the State Human Rights Commission [SHRC] dated 27 May 2008 that finds in favour of the victims, and against the 2 RR, and recommends Rs. 2 lakhs for each family, in addition to investigations on the FIR. This decision was based on a communication from the District Magistrate, Islamabad to the Divisional Commissioner, Islamabad that quotes a communication from the Senior Superintendent of Police [SSP], Anantnag, dated 25 April 1995 that investigations had found the involvement of 3 army personnel.

The above position is confirmed by the Jammu and Kashmir police responses to the RTI i.e. that the police had indicted certain army personnel. But, it appears that the request for sanction has not moved beyond the Home Department, Jammu and Kashmir.

The witness statement itself indicts the first three alleged perpetrators to some degree in the involvement in the extra-judicial killings though it is not evidence of direct involvement but rather a presumption that the three officers, who had command in the area, would have been involved. The involvement of alleged perpetrator no.4 in the torture of the witness himself is based on direct evidence. It is clear that all the allegations require further investigation.

Case No. 46

Victim Details

Mohammad Ismail Bhat alias Rameez Raja [Torture and Extra-judicial Killing]
Age: 19
Militant, with Al- Jihad
Son of: Mohammad Sultan Bhat
Resident of: Liddarmad, Littar, Pulwama district

40 Separately, a RTI was filed on 18 December 2012 to Jammu and Kashmir Police regarding custodial killings in Jammu and Kashmir between 1989 and 2012. By communication dated 27 February 2013 a copy of the FIR was provided.

Alleged Perpetrators

1. Commanding Officer [Colonel] of Frisal camp [on 29 October 1994]
2. Captain Adjutant P. Saxena, 9 Rashtriya Rifles, Frisal Camp
3. Major Gill, 9 Rashtriya Rifles, Panchgam Camp

Case Information

On 29 October 1994, at around 9 am in the morning, there was a crackdown in the village of Liddarmad in Pulwama. The family saw around one thousand army men from the Rashtriya Rifles of Freshil Camp arrive in 10-20 vehicles and surround the village. The army was accompanied by a “*mukhbir*” [informant] who had given the army information regarding the whereabouts of Mohammad Ismail Bhat, a militant who had joined the armed struggle in 1988 and had been active in the area for nearly three years. The brother of the victim was at his shop on the main road at the time.

Following the arrival of the army, there was an announcement in the village mosque urging all the villagers to gather in the building of the primary government school wherein the men of the village were taken inside the compound of the school and the women were kept outside the school compound. There were around one thousand men from the village inside the compound along with 10-20 personnel of the Rashtriya Rifles with a Kashmiri Pandit Commanding Officer [CO] from the Frisal Camp and Major Gill of the Panchgam Army Camp. [The family believes the Commanding Officer was a Kashmiri Pandit because he looked like a native Kashmiri and also spoke Kashmiri.]

At the camp, the CO ordered the brother of the militant to stand up, and he did. The army personnel beat the brother of the victim and asked him for information about his militant brother to which he said that he didn't possess any such information. The father, mother and sisters of the victim were also beaten. In the meantime, 2-3 army men got the victim into the school – the victim had left his house a week earlier and the family did not know of his whereabouts. The family later came to know that the victim had been staying in the village and had tried to escape to a meadow in the area but was caught by the army and identified by the “*mukhbir*”.

Both the brothers were taken inside the school and kept in separate rooms. However, the brother of the victim was able to look into the room where the victim was through a slight gap in the doors. The brother of the victim was stripped and, while being severely beaten, was asked to reveal the location of his guns and ammunition and ordered to hand them over. The

brother of the victim was also taken to a nearby river and pushed into it while the army personnel tied his hands and tried to drown him.

The brother of the victim believes that the victim was repeatedly hit with bricks, the sound of which the brother of the victim heard from the adjoining room. At around 2 pm, the victim confessed to being a militant and was taken to Hangen, Yarripora to his grandparents' house, where the victim handed over an AK-47 to the army personnel. The brother of the victim was also made to accompany the army to Yarripora; following this both were brought back to the school.

At around 7 pm, the family heard 2-3 shots being fired; the brother of the victim also heard this firing while at the school. At 7:30 pm, an army personnel accompanying the CO asked him if the brother of the victim was also to be shot.

The next day, at 4 or 5pm, the family received the dead body of the victim from the police of the Zainapora Police Station. It had three bullet marks on the head. The family suspects that the victim had died during the 'interrogation' but was later shot so as to justify the rationale of 'cross-firing', which was the narrative employed in the First Information Report [FIR] filed regarding the killing of the victim.

The army tormented the family even after the killing of the victim. As a result, the family moved further into the village, far from their previous residence on the main road. They built a new house so that they would have time to escape when the armed forces approached.

The brother of the victim, Mohammad Ashraf Bhat, gave the above statement to the IPTK 7 April 2015.

An FIR was registered no. 142/1994 at Police Station Pulwama, with regard to the killing of Mohammad Ismail Bhat by the 9th Battalion of the Rashtriya Rifles under section 307 [Attempt to Murder] of the Ranbir Penal Code and Sections 3/25 of the Arms Act stating the date of the “cross firing” to be 30 October 1994. This FIR was filed by Captain P. Saxena on behalf of the Commanding Officer and states that the victim was killed in an encounter.

The Jammu and Kashmir Police have provided no information on the status of investigations in this case. From the statement of the witness Major Gill's role is on record. The FIR places both Captain P. Saxena and the Commanding Officer at the time on record as well. The witness – brother of the victim – has given a cogent, credible statement and he is an eye-witness to the torture of his brother. Therefore, the evidence exists for investigation and prosecution in this case.

Case No. 47Victim Details

Abdul Rashid Pachoo [Abduction, Torture and Extra-Judicial Killing (Custodial Killing)]

Son of: Aziz Pachoo

Resident of: Kamla Trigam, Banihal, Ramban District

Alleged Perpetrators

1. Major Nagori, 17 Rashtriya Rifles [RR], Army
2. Junior Commissioned Officer [JCO] Hukum Singh, 17 Rashtriya Rifles [RR], Army

Case Information

The family of Abdul Rashid Pachoo states that on 27 November 1994, he was picked up by a team led by Major Nagori and JCO Hukum Singh. He was beaten for the whole day and then at 4:00 pm he was taken out and shot dead.

First Information Report [FIR] no.93/1994 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Banihal Police Station on 28 November 1994⁴¹. The communication of 9 May 2012 stated that on 1 April 1997 the chargesheet was produced in the court of Judicial Magistrate 1st Class, Banihal against Subedar Hukum Singh.

On 13 May 1997 the case was transferred to the Additional Sessions Court, Ramban.

It was further transferred to the Army court on 5 September 1997 as per the record of the Public Prosecutor, Sessions Court, Ramban. The further disposal of the case was still awaited from the Army court.

The post-mortem report confirmed that the victim had died due to a bullet injury.

According to the family of Abdul Rashid Pachoo, the transfer of the case from the civil court to the Army court is not in their knowledge. Also, because of the threats from the army the family has stopped pursuing the case.

On 10 January 2012 a RTI was filed to the Ministry of Defence seeking information of court of inquiries and court-martials conducted by the army in Jammu and Kashmir between 1990 and 2011. The information provided does not list the instant case.

Case No. 48Victim Details

Bilal Ahmad [Extra-Judicial Killing]

Son of: Ghulam Mustafa [deceased], Kulsoom

Resident of: Mohalla Masjid, Bhaderwah, Doda District

Alleged Perpetrators

1. Deputy Commandant B.R. Singh, 120th Battalion Central Reserve Police Force [CRPF]
2. Sub-Inspector [SI] Bhagwan Das, 120th Battalion Central Reserve Police Force [CRPF]
3. Head Constable Raghbir Singh, 120th Battalion Central Reserve Police Force [CRPF]
4. Head Constable Isher Dass, 120th Battalion Central Reserve Police Force [CRPF]
5. Assistant Commandant [Captain] Brij Bhushan, 120th Battalion Central Reserve Police Force [CRPF]
6. Lance Naik [Lance Corporal] Kuldeep Singh, 120th Battalion Central Reserve Police Force [CRPF]

Case Information

In December 1994, Bilal Ahmad was shot dead by SI Bhagwan Das and cash/jewellery worth Rs.72,000 were taken from his house.

The family of Bilal Ahmad approached the State Human Rights Commission [SHRC] on 4 June 2008 and a final decision was delivered on 1 January 2009 and benefits under SRO-199 [Statutory Rules and Orders] were recommended. The SHRC indicted SI Bhagwan Das.

The SHRC relied essentially on a report of the Additional District Magistrate, Doda dated 26 August 2008 that in turn relied on a report of the Senior Superintendent of Police [SSP], Doda dated 22 August 2008, which stated that the alleged perpetrators entered the house of the victim, dragged him out, and then SI Bhagwan Das placed him against a wall and shot him. It was also stated that a chargesheet u/s 302 [Murder], 452 [House trespass after preparation for hurt/assault/wrongful restraint], 382 [Theft after preparation for causing death, hurt or restraint], 148 [Rioting armed with deadly weapon], 149 [Liability for other members of unlawful assembly] Ranbir Penal Code, 1989 [RPC] was produced before the court on 12 November 2007. It is unclear which of the alleged perpetrators were indicted in the charge sheet.

While the SHRC rightly indicted SI Bhagwan Das, it is unfortunate that it did not do the same for the other alleged perpetrators who were clearly a part of the operation. By virtue of Section 34 [Common intention]

41 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. A copy of the FIR and chargesheet produced in the case were provided by the Jammu and Kashmir Police by communication dated 9 May 2012.

Ranbir Penal Code, 1989 [RPC] all the alleged perpetrators would be implicated in the crime as they were closely involved in the operation.

Further, the IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the CRPF between 1990 and 2011 in Jammu and Kashmir. No information was provided.

The IPTK also sought information on 10 January 2012 on all cases of sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

Case No. 49

Victim Details

Khazir Mohammad Akhoon [Abduction and Extra-Judicial Killing]
Occupation: Driver
Son of: Lala Akhoon
Resident of: Wethpora, Srinagar

Alleged Perpetrators

1. 2nd Lieutenant N. Vidya Sagar, 125th Battalion Jammu and Kashmir Light Infantry [JAKLI], Army

Case Information

On 14/15 December 1994 Khazir Mohammad Akhoon was arrested and his bullet ridden dead body was found on 15 December 1994. Khazir Mohammad Akhoon had been dragged out of his house.

After half an hour, his brother and his family heard gun shots from a nearby newly constructed school building. As it was during the night, no one went out to check. They waited for the morning. In the morning they saw that in the building there was blood and clothes at various places. The family believes there was some personal animosity behind the abduction.

First Information Report [FIR] no. 384/1994 u/s 364 [Kidnapping / Abducting to murder], 354 [Assault / Criminal force to a woman with intent to outrage modesty], 457, 307 [Attempt to murder], 427 [Mischief causing damage of Rs.50 and upwards], 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Sadder Police Station, Srinagar on 15 December 1994⁴².

The 21 December 2011 communication of the Jammu and Kashmir Police stated that the case was registered on 15 December 1994 on a written report lodged by Abdul Rashid Akhoon, son of Lal Akhoon,

resident of Wethpora, Srinagar, that personnel of the 125th Bn JAKLI during the night of 14/15 December 1994 picked up the victim and on 15 December 1994 his bullet ridden dead body was found near the premises of a nearby school. Investigation was closed as chargesheeted and sanction for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] was sought. By communication dated 30 November 2013 from the Jammu and Kashmir Police it was stated that the case still under investigation. The same information is provided by communication dated 22 April 2014 from the Jammu and Kashmir Police. In addition, an unclear communication dated 16 July 1996, from Sub-Divisional Police Officer [SDPO], Sadder, to Superintendent of Police, City South, Srinagar, was provided. This communication appears to be an enquiry into the status of sanction.

The Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction for prosecution was sought on 5 December 1995 and was awaited. In this document the unit involved is listed as "125 (TA)".

The available documents from the Ministry of Defence do not mention this case at all, thereby suggesting that the case was never received on their end. If received, the Ministry of Defence has taken sixteen years to process the grant or decline of sanction.

Further, the available documents do not suggest that a court-martial was conducted in this case by the army. If, as the family of Khazir Mohammad Akhoon believes, the victim's killing was a result of personal animosity, the conduct of the Ministry of Defence suggests that even crimes committed by armed forces personnel outside their official duty continue to be shielded by AFSPA.

Case No. 50

Victim Details

1. Muktha Sheikh [Abduction, Torture and Extra-Judicial Killing]
Age: 45
Occupation: Tea stall owner
Son of: Abdul Samad Sheikh
Resident of: Sheikh Mohalla, Barnate, Uri, Baramulla District
2. Sultan Sheikh [Abduction, Torture and Extra-Judicial Killing]
Son of: Subhan Sheikh
Resident of: Sheikh Mohalla, Barnate, Uri, Baramulla District

⁴² Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. A copy of the FIR was provided by a Jammu and Kashmir Police communication dated 21 December 2011. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

Alleged Perpetrators

1. Captain Athal Prashad, 5th Rajputana Rifles, Army, Camp Kralchak, Barnate

Case Information

On 31 December 1994 at about 8:30 pm, the Captain Prashad and other personnel from the 5th Rajput Rifles came to the houses of the victims. Muktha Sheikh and Sultan Sheikh were taken to show the army personnel the way.

On not being released till the following morning, the families of Muktha Sheikh and Sultan Sheikh went to the Barnate Camp and were informed by a Havaldar Jagandhar that the victims had been taken to the Rampur Brigade Headquarters and would be released soon.

That same morning at about 5:45 am they family of Mukhta Sheikh had heard two gunshots. At about 3:00 pm the army camp informed the Lambardar [Numberdar, de facto revenue authority in the village] Mohammad Mir Sood that the dead body of Muktha Sheikh was at Kralchak, Barnate. The body of the victim had two bullet wounds and the body carried visible torture marks. The body of Sultan Sheikh was found 15 days later at Razarwani forests. His body had no bullet wounds but bore torture marks.

The family of Mukhta Sheikh approached the police to file a FIR which was subsequently filed as First Information Report no.34/1995 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] at the Boniyar Police Station on 21 May 1995⁴³. The FIR states that the victims were taken to show the way on 31 December 1994. The FIR states that the body of Mukta Sheikh was found in May 1995. This body was handed over to the Numberdar. He had been killed by a bullet. The FIR states that the body of Sultan Sheikh was found in Razarwani on 13 January 1995. Sultan Sheikh died due to severe torture. The 22 May 2012 communication from the Jammu and Kashmir Police states that the case had been closed by declaring the perpetrators as untraced. The closure report, provided on 30 November 2013, was filed on 18 January 2012, where it is stated that during investigation it was found, through communication CD No. HOM/10/4224 from the Ministry of Defence on 4 August 2010, that the no person by the name of Captain Athal Prashad exists in the 5 Rajputana Rifles, and that there was no search and cordon as alleged.

Both families of the victims received Rs. 1,00,000 ex-gratia government relief but are yet to receive compassionate employment under SRO-43 [Statutory

Rules and Orders] benefits.

The family of the victim gave a statement to the IPTK on 20 February 2012.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that the case had been received in September 2006 was under consideration.

A letter from the Senior Superintendent of Police Baramulla, dated 12 March 2009 confirms that Muktha Sheikh was not involved in any subversive activities. Further, a letter from the Sub-District Police Office, Uri, dated 5 March 2009, confirms that Muktha Sheikh was killed by the army and that the case had been sent for the grant of sanction for prosecution under AFSPA.

This is yet another example of the Jammu and Kashmir Police choosing to close the case by declaring the perpetrators as untraced and thereby showing absolute insensitivity for the process of prosecution and justice. Also, based on the information on record the conduct of the Jammu and Kashmir Police has been irresponsible as they themselves did not file the FIR but only did so after the persuasion of the family, five months after the incident.

Also, noteworthy is that it took the police and Government of Jammu and Kashmir 11 years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

The issue of whether Captain Athal Prashad existed in the 5 Rajputana Rifles would require further enquiry. As per law, the police should have filed the closure report before a competent court who in turn would have enquired on this question, and sought further records from the Ministry of Defence. Further, the court would normally have dismissed the suggestion that no search and cordon took place based on available witness testimony which would presumably have formed a part of the police record.

Case No. 51Victim Details

Mohammad Ismil Khan [Extra-Judicial Killing]
Son of: Inayatullah Khan
Resident of: Kawder Sheeri, Baramulla District

Alleged Perpetrators

1. Major Sunil Jadhv, 3 Rashtriya Rifles [RR], Army

⁴³ Information on this FIR was sought through RTI on 7 October 2011. By letter dated 22 May 2012, a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. By communication dated 30 November 2013 from Jammu and Kashmir Police a copy of the closure report was provided. By communication dated 22 April 2014, documents including the closure report and FIR were once again provided.

Case Information

First Information Report [FIR] no.59/1994 u/s 302 [Murder] was filed at Sheeri Police Station. Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. Communication dated 22 May 2012 from the Jammu and Kashmir Police states that the case was closed as not admitted. Further, that the copy of FIR was misplaced. Further information sought through RTI on 15 October 2013. By communication dated 22 April 2014 from the Jammu and Kashmir Police information was provided that the case was closed as not admitted. But, no documents were provided. Further information sought through RTI dated 14 November 2014. By communication dated 6 January 2015 information was provided that the case was closed as not admitted on 10 May 2005.

The Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecutions under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 in relation to this case that sanction was sought on 27 March 2001 and was awaited.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir took seven years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

Further, available documents from the Ministry of Defence do not mention this case at all, thereby suggesting that the case was never received on their end.

Further, the available documents do not suggest that even a court-martial was conducted in this case by the army.

It needs to be ascertained whether the Jammu and Kashmir Government has at all sent the case for sanction for prosecution to the Ministry of Defence and whether the Ministry of Defence has misplaced the case file.

At least after the 2009 affidavit by the Ministry of Defence which does not mention this case, the Jammu and Kashmir Government should have considered even re-sending the case or clarifying when and how the case was sent.

Finally, the Jammu and Kashmir Police has inexplicably closed the case as not admitted despite sanction for prosecution still being awaited.

Case No. 52Victim Details

Ghulam Nabi Dar [Abduction, Wrongful Confinement]

Son of: Mohammad Ramzan Dar
Resident of: Muniwar, Islamabad

Ali Mohammad Kumar [Abduction, Torture, Extra-judicial killing]
Resident of: Takiya Behramshah, Islamabad

Alleged Perpetrators

1. Sheikh Tahir alias Tahir *Fuf*, Government Gunman [Ikhwan]
2. Masrat Bilal, Government Gunman [Ikhwan]

Case Information

In 1995, at around 05:00 pm, Ikhwan of Islamabad came to the house of Ghulam Nabi Dar at Muniwar. By then they had already lifted Ali Mohammad Kumar from the village Takiya Behramshah from his Medical shop which is 2 kms away from the village Muniwar. Ali Mohammad Kumar was a member of Jamaat-e-Islami. They brought him along to the house of Ghulam Nabi Dar and arrested Ghulam Nabi as well. There were around 20-25 Ikhwan. Ghulam Nabi could identify Tahir *Fuf* and Masrat Bilal. Masrat Bilal is now Sarpanch of the village. They blindfolded Ghulam Nabi and took him in a vehicle.

Villagers came out of their houses and tried to stop Ikhwan. Then the Ikhwan opened few aerial fire shots and managed to disperse the people. Both victims were taken to Achabal and were kept there in some house.

On the first night Ali Mohammad was tortured. Ikhwan had taken along another young boy, resident of Khanabal. He too was tortured that first night. On the second day they were all taken to another house. Ghulam Nabi was not tortured or beaten. He was just forced to announce in public that he did not belong to Jamaat-e-Islami. Both Ali Mohammad and the young boy were tortured in a separate room so Ghulam Nabi does not know how they were actually tortured. Ghulam Nabi saw an Ikhwan called Liyaqat Ali Khan as well at Achabal.

On the third day all three victims were taken to Shehlipora, where there was a government gunman camp headed by Nab Azad. There Tahir demanded money from Ghulam Nabi Dar. On the same day Masrat Bilal's father approached to the camp at Shehlipora along with other elders of the village to release the victims. Qazi Nisar also sent a letter to these gunmen and recommended the release of Ghulam Nabi Dar as he was his friend. On the same day all the three victims were first allowed to offer prayers along with elders of the village. Then Ghulam Nabi and the young boy were released from there. But Ali Mohammad was taken back to Shehlipora and on the same night he was killed. Next day his dead body was found in a river.

The victim Ghulam Nabi Dar gave the above

statement to the IPTK on 31 July 2015.

The witness statement is clear, and cogent evidence is presented of the abduction and torture by the alleged perpetrators. The allegations warrant further investigation particularly on the role of Liyaqat Ali Khan and Ghulam Nabi Azad of the Ikhwan and Muslim Mujahideen [MM], also government gunmen, in this killing.

Case No. 53

Victim Details

1. Sheikh Mohammad Yasir [Torture and Extra-Judicial Killing]
Age: 19
Son of: Sheikh Mohammad Anwar
Resident of: Magharmal Bagh, Srinagar
2. Mohammad Yousuf Bhat [Torture and Extra-Judicial Killing]
Age: 38
Brother of: Ghulam Nabi Bhat
Resident of: Danderkhah, Batmaloo, Srinagar

Alleged Perpetrators

1. Sikh Officer, 2 Grenadiers, Army, Camp Malaysia, Batmaloo [as of 20 January 1995]
2. Personnel of the 81st, 84th, and 15th Battalions of the Border Security Force [BSF]

Case Information

On 20 January 1995 at 11:00 am the 2 Grenadiers, and the 81st, 84th, and 15th Battalions of the BSF cordoned Batmaloo, Magharmal Bagh, Aluchi Bagh and other adjoining areas. Subsequently, Sheikh Mohammad Yasir and Mohammad Yousuf Bhat were taken to a make shift interrogation centre in the Middle School Building, Lachmanpora. Both were killed and their bodies were handed over by the Ram Munshi Bagh Police Station on 21 January 1995.

The family of Sheikh Mohammad Yasir saw the dead bodies of both victims. The bodies bore torture and gunshot marks. An eye-witness, Farooq Ahmed Bhat, son of Mukahhad Shaban Bhat, confirmed to the family of Mohammad Yousuf Bhat that both victims had been tortured. Alleged perpetrator no.1 is identified by the family of Mohammad Yousuf Bhat.

The family of the Sheikh Mohammad Yasir gave a statement to the IPTK on 2 December 2011, and the family of Mohammad Yousuf Bhat gave a statement to the IPTK on 26 February 2012.

No First Information Report [FIR] was registered. A petition was moved to the Judicial Magistrate,

Srinagar who directed on 25 January 1995 that a FIR be filed. Then the FIR was registered: FIR no.21/1995 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] at the Shergari Police Station⁴⁴. The Jammu and Kashmir Police provided information that the case was treated as closed. But, by communication dated 30 November 2013 from the Jammu and Kashmir Police it is stated that the case is under investigation. By communication dated 22 April 2014 it was stated that the investigation of the case was concluded by declaring the perpetrators as untraced. During re-investigation it was concluded as not admitted and closure report was filed before the competent court, but the court did not agree with the conclusion of the case and order for its re-opening/re-investigation.

Applications by the families of the victims were filed before the District Magistrate, Srinagar for compensation on 7 February 1995.

The families of the victims filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 56/1995. An amended writ petition was allowed to be filed vide order dated 14 September 1998] seeking completion of the investigations on the FIR filed, filing of a chargesheet, and compensation of Rs. 50,00,000. The petition was dismissed for want of prosecution on 7 May 1999 but restored subsequently.

The Ministry of Defence stated that before a cordon could be put in place, there was firing by militants.

Subsequently, a cordon was put in place. Then there was heavy firing from the houses of Sheikh Mohammad Yasir and Mohammad Yousuf Bhat who were then killed. The Ministry of Defence appears to suggest that Sheikh Mohammad Yasir and Mohammad Yousuf Bhat were militants. The Government of Jammu and Kashmir and the police authorities stated that during investigations it was found that search and cordon operations were conducted on 20 January 1995 and that five persons were killed in cross-firing with militants. During this cross firing Sheikh Mohammad Yasir and Mohammad Yousuf Bhat were killed. The Government of Jammu and Kashmir and police authorities also stated that Sheikh Mohammad Yasir and Mohammad Yousuf Bhat were killed by gunshot wounds during the cross firing and not by torture as alleged by the victim's family.

There is a contradiction therefore in the stand taken by the Government of Jammu and Kashmir and police authorities, on one hand, and the Ministry of Defence on the other, as the Ministry of Defence appears to state that the two victims were militants.

The High Court, in its final decision of 28 July 2003,

⁴⁴ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. A copy of the FIR was provided on 2 June 2012 from the Jammu and Kashmir Police. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

held that Sheikh Mohammad Yasir and Mohammad Yousuf Bhat could not be said to have been directly involved in the firing. As they were innocent, the High Court ordered compensation of Rs.4,00,000 for the death of Sheikh Mohammad Yasir, based on his age, and Rs.3,00,000 for the death of Mohammad Yousuf Bhat⁴⁵.

A Letter Patent Appeal [LPA] [no. 65/2004] was filed by the Government of Jammu and Kashmir and others against the order of compensation⁴⁶.

The State Human Rights Commission [SHRC] was also approached and issued a final decision on 29 July 2003 and recommended compensation to be paid.

Also on record is a 18 May 1999 order by the Chief Judicial Magistrate [CJM] which states that the police have finished investigation but it is faulty and re-investigation is to be done.

Further, a letter of the Senior Superintendent of Police [SSP], Srinagar, dated 13 February 2004 to the Deputy Commissioner states that following the CJM order, on 2 June 1999 re-investigation was done. But, the letter states the army is not cooperating and investigation is ongoing.

Also on record is another letter, dated 20 May 2002 from the SSP to the Inspector General of Police [IGP], Kashmir which states that the army unit has moved, but that the case is made out and that investigations are ongoing.

The family of Mohammad Yousuf Bhat received Rs.1,00,000 ex-gratia government relief but no compassionate employment under SRO-43 [Statutory Rules and Orders].

The Jammu and Kashmir Police appears to have sought to shield the armed forces in the extra-judicial killing of two persons.

From not filing a FIR without judicial intervention, to carrying out faulty investigations, this case is an indictment of the police and the manner in which it seeks to shield alleged perpetrators of crimes in Jammu and Kashmir.

Further, it needs to be ascertained why the investigations are still ongoing despite the passage of so many years.

The approach of the Jammu and Kashmir Police has been compounded by the manner in which the High Court has limited itself to compensation and has not sought to monitor the investigations in this case. This has clearly resulted in a denial of justice.

Available documents from the Ministry of Defence do not mention this case at all, thereby suggesting that the case was never received on their end for sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA].

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Similarly, with regard to the BSF, the IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir. No information was provided.

The IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

Case No. 54

Victim Details

Abdul Hameed Khan [Abduction, Extra-judicial killing]

Age: 24

Occupation: Worked in his tea stall till 1993 [after leaving Hizbul Mujahideen, started working as a cloth vendor]

Son of: Abdul Rasheed Khan

Resident of: Bhat Mohalla, Pattan, Baramulla district

Alleged Perpetrators

1. Ghulam Mohammad, resident of Palhallan, Baramulla district, Government Gunman
2. Batu Sofi, son of Ghulam Mohammad Sofi, resident of Pattan, Baramulla district, Government Gunman

Case Information

Abdul Hameed Khan was associated with the Hizbul Mujahideen from 1992 till 1993. In 1993, he returned his weapons to the organization and stopped all association with them.

On 5 February 1995, the victim came back home in the evening at around 6 pm. It was the fifteenth day of the month of Ramzan, and the victim was fasting. He was taking his meal for *iftar* when there was a knock at their door. The interviewee opened the door and identified the two persons as Ghulam Mohammad [resident of Palhallan] and Batu Sofi, son of Ghulam Mohammad Sofi [resident of Pattan]. They asked for

45 Information on the petition number was sought through RTI on 16 February 2012. Information was provided.

46 Information on the petition number was sought through RTI on 16 February 2012. No information was provided. Information on this petition was sought again on 4 April 2014.

Abdul Hameed. The victim, hearing commotion, went out to the gate to see what was happening. The interviewee came inside to wear his slippers and right then the victim was abducted and taken away.

The neighbors later told the family that there had been more people besides those two who had knocked at their door and all of them had been threatened to not to come out of their homes. The army had also accompanied those Ikhwan.

Then, the interviewee, along with his relatives and neighbors, approached Police Station Pattan and informed them about the incident. But the police officer at that time, Ghulam Rasool ["munshi at the station"], did not file a First Information Report [FIR] and asked them to wait till the morning. So they then went out to look for the victim. The interviewee tried to follow the lead of some shopkeepers who witnessed the incident and informed him that the victim had been taken to Palhallan. So, the interviewee tried to go to the government gunmen camp in Tantray Mohalla in Palhallan, but the army stopped him and did not let him cross Baba Taing Camp. So, he returned home and waited till morning, as asked by the police personnel.

In the morning of 6 February 1995, Abdul Majeed Khan and his three neighbours, namely Mohammad Shafi Bhat [son of Ghulam Mohi-ud-din Bhat], Ghulam Nabi Wani [son of Ghulam Mohammad Wani], and Nazir Ahmad Sofi [son of Mohammad Ramzan Sofi], again went to the Pattan police station but were told that the Station House Officer [SHO] had not yet come. They went to a nearby market of Pattan and waited for the SHO. At around 9-9:15 am, they again went to the police station and saw 3-4 army trucks inside the premises of the Station. They asked the gatekeeper to let them meet the SHO, but were informed that the SHO was in a meeting with the army and would take time. In the meantime, the victim's relatives also joined the interviewee. They waited for around an hour and, after seeing the army trucks leaving the premises, again approached the police station, and this time met the SHO. The SHO told the victim's brother to not worry, as his brother was alive and would return home in an hour or so.

When they came out of police station, few unknown people told them that there was some firing at Palhallan, Khambiyar and the army had come to call the police, informing them about a dead body. This dead body had been handed over to the police. Those people said that the body could be of his brother.

After this, the scene became very chaotic. They then recovered the body from the police station and took it to the Jamia Masjid, Pattan for the last rituals. Then, the body was taken and buried in Martyr's graveyard.

The victim's relatives and neighbours went to the police station the next day to file a First Information Report [FIR], but were informed that the army had already filed an FIR. His family did not take the

documents of FIR nor did they file a counter FIR.

The interviewee's brother-in-law was a constable with Jammu and Kashmir Police at Baramulla and told him that the FIR registered stated that a pistol was found from Abdul Hameed, but the interviewee denied this fact. No compensation was given to the family.

The brother of the victim, Abdul Majeed Khan, gave the above statement to the IPTK on 9 June 2015.

The witness statement is clear, and cogent evidence is presented of the abduction and then killing of the victim. The allegations warrant further investigation and the accused responsible for the actual killing of the victim need to be identified. Based on information that a false FIR was filed and the mention of the army in the above statement, the army appears to have been involved in the killing.

Case No. 55

Victim Details

Ali Mohammad Dar [Torture, Extra-judicial killing]
Occupation: Government Teacher
Son of: Mohammad Subhan Dar
Resident of: Vigara, Bandipora.

Alleged Perpetrators

1. Bashir Khan, Government Gunman [Ikhwan]
2. Shabir Sofi, Government Gunman [Ikhwan]
3. Sattar Sofi, Government Gunman [Ikhwan]
4. Moinuddin Kazmi, Government Gunman [Ikhwan]
5. Shafiq Pandith, Government Gunman [Ikhwan]

Case Information

On 8 April 1995 at about 10:00 am Ali Mohammad Dar, was picked up by a group of about 10-15 armed Ikhwan, during a raid and search operation at his residence. The Ikhwan group was headed by Bashir Khan and included Shabir Sofi, Sattar Sofi, Moinuddin Kazmi and Shafiq Pandith. This group operated under the main Ikhwan commanders in the area, Javaid Shah and Usman Majeed, with head quarters in Nadihal, Brar, and Guroora. They were under the control of the Indian Army camp at Nadihal and Papchan.

The above named Ikhwan entered into the room and fired several rounds of bullets in the air. Bashir Khan and Shabir Sofi tried to physically pick up Ali Mohammad and drag him out, but the family members did not allow them to do so. The Ikhwan then shot several bullets directly into his abdomen, and hurriedly left the house thinking that the victim was dead. However the victim was still alive, though bleeding heavily. When the victim's neighbours and family members tried to take the severely injured victim to the

hospital, they were obstructed by Ikhwan from Nadihal camp, on the way, between the petrol pump Nadihal and the Border Security Force Camp [BSF] camp, Papchan. The Ikhwan forcibly took away Ali Mohammad to the Ikhwan camp at Nadihal. When his almost dead body was handed over to the family after a few hours, in addition to the bullet injuries it bore marks of knife wounds, torture marks, and the spinal chord was broken. The victim breathed his last in the presence of his relatives.

Ikhwan from the Nadihal camp including Bashir Khan, Bashir Sheikh, Ilyas Watta, Shabir Sofi, Sattar Sofi, Ashraf Beigh prevented family members from organizing a proper funeral and other locals from attending the mourning ceremonies. Due to the fear and terror which spread through out the area after the public killing, his body was buried in the ancestral graveyard in the presence of only a small group of villagers.

A relative of the victim, Manzoor Ahmed Dar, gave the above statement to the IPTK on 12 July 2015

The witness statement provides clear evidence of the torture and killing of the victim. In addition, the role of the army and senior Ikhwan such as Usman Majeed in this killing, even under the international criminal law principles of command responsibility, would need to be analyzed and further investigations are warranted.

Case No. 56

Victim Details

Ghulam Hassan Dar [Extra-judicial killing]

Age: 43

Occupation: Government Service [Employee in Revenue Department]

Son of: Abdul Jabbar Dar

Resident of: Banyari Sharki, Tehsil Hajin Sonawari, Bandipora district

Noor Mohammad Dar [Extra-judicial killing]

Age: 16

Occupation: Student

Son of: Mohammed Akbar Dar

Resident of: Banyan Sharki, Hajin Sonawari tehsil, Bandipora district

Fayaz Ahad Dar [Extra-judicial killing]

Age: 18

Occupation: Student

Son of: Mohammed Akbar Dar

Resident of: Banyan Sharki, Hajin Sonawari tehsil, Bandipora district

Alleged Perpetrators

1. Mohammad Sultan Dar, Government Gunman [Ikhwan]
2. Mohammad Shafi Peer, Government Gunman [Ikhwan]

3. Manzoor Ahmad, Government Gunman [Ikhwan]
4. Abdul Majeed, Government Gunman [Ikhwan]
5. Javed Mir, Government Gunman [Ikhwan]
6. Bashir Ahmad Malla, Government Gunman [Ikhwan]
7. Ghulam Ahmad Laway, Government Gunman [Ikhwan]
8. Ghulam Hassan Parray, Government Gunman [Ikhwan]
9. Hamza Khan, Government Gunman [Ikhwan]
10. Ghulam Hassan Rahil, Government Gunman [Ikhwan]
11. Saddam, Government Gunman [Ikhwan]

Case Information

Ghulam Hassan Dar, an employee of the revenue department working as a *Patwari*, and Ghulam Mohiuddin Dar, *Numberdar* of Prang left for Sopore, as they were aware that Ikhwan were searching for them. Ghulam Mohiuddin Dar was also a fruit seller and he travelled to Delhi for business often. Ikhwan sent Ghulam Hassan Dar a notice that no one would harm him and that he could come back and stay with his family.

As soon as Ghulam Hassan Dar came home, he was arrested without providing his family an appropriate reason. He was placed inside Barampatar camp. In the camp, a Shahnawaz from Ajas, also linked to Ikhwan told Ghulam Hassan Dar that if he were to be killed by the Hizbul Mujahedeen, then the victim wouldn't remain alive as well. Later on, the Hizbul Mujahedeen killed Shahnawaz..

One morning, 7 May 1995, at around 12:30 pm, when all family members – Shafeeqa Begum [wife], Tariq Ahmad [son] and Masreena [daughter] were present – Ikhwan headed by Mohammad Sultan Dar along with Mohammad Shafi Peer, Manzoor Ahmad, Farooq Ahmad, Abdul Majeed, Javed Mir, Bashir Ahmad Malla, Ghulam Ahmad Laway, Ghulam Hassan Parray and Hamza Khan summoned the entire family to the house of Mohammad Yousuf Khan, son of Habibullah Khan. By the time the family reached the house, they heard gunshots, which had resulted in the death of Noor Mohammad and Fayaz Ahmad, sons of Ghulam Hassan Dar's brother Mohammad Akbar Dar.

In the house, Shafi Peer ordered Farooq Ahmad to shoot Ghulam Hassan Dar. Farooq refused, due to which Shafi Peer, along with Sultan Dar and Bashir Ahmad Malla, shot Ghulam Hassan Dar. In this shooting, Ghulam Hassan Dar's daughter got injured, as she was hugging her father. When Ikhwan tried to shoot at Ghulam Hassan Dar's son, the house owner Mohammad Yousuf took the bullet on his hand. Ghulam Hassan's son ran and hid himself under a ladder.

When Ikhwan were shooting at Ghulam Hassan Dar,

the victim started reciting Quran. After a few hours, the Ikhwan left and Ghulam Hassan Dar's son who was hiding under the ladder came out, he found his father dead, having received five bullets. His mother took his injured sister to the hospital. They carried Ghulam Hassan Dar's body to perform the last ritual and buried him in the local graveyard.

The son of the victim, Mehraj-ud-din Dar, gave the above statement to the IPTK on 5 June 2015.

In addition to the above statement, *the brother of the victim, Zahoor Ahmad Dar, gave the below statement to the IPTK on 12 June 2015.*

The entire Dar family was present in the house when Ikhwan Mohammad Sultan Dar entered and announced that Ikhwan had summoned Noor Mohammad Dar and Fayaz Ahmad Dar. They were taken outside the village to a place named Kach. As soon as they reached, the Ikhwan shot and killed them.

After a few hours, Ikhwan named Ghulam Hassan Rahil, Saddam, Mohammad Sultan Dar and Manzoor Ahmad Dar entered the village and allowed the family to collect the dead body and perform the final rituals. They were buried in their local graveyard.

The witness statements are clear, and cogent evidence is presented of the killing of the three victims. The allegations warrant further investigation. Farooq Ahmad, Ikhwan, has not been listed as an alleged perpetrator as he appears to have refused to shoot Ghulam Hassan Dar. But, his responsibility for the other killings, and even in the killing of the victim, would require further investigations.

Case No. 57

Victim Details

Sonaullah Malik [Abduction and Extra-Judicial Killing (Custodial Killing)]

Occupation: Farmer

Son of: Ghulam Qadir Malik

Resident of: Zum Zum Pora, Zandfaran, Sheeri, Baramulla District

Alleged Perpetrators

1. Major Chinapa, 28 Rashtriya Rifles [RR], Army, Camp Heewan, Baramulla
2. Major Achariya, 28 Rashtriya Rifles [RR], Army, Camp Heewan, Baramulla
3. Mohammad Aslam, Company Havaladar Major

[CHM] 28 Rashtriya Rifles [RR], Army, Camp Heewan, Baramulla

4. Major P.S. Lamba, 28 Rashtriya Rifles [RR], Army, Camp Heewan, Baramulla

Case Information

Sonaullah Malik was a surrendered militant and was working as a farmer. On 12 May 1995, Sonaullah Malik was produced before the alleged perpetrators in the presence of the Lambardar [Numberdar, de facto revenue authority in the village] Amma Malik and a chowkidar [guard] Muhammad Suliman Malik. Subsequently, on the following day, the Lambardar and Chowkidar were informed that Sonaullah Malik was killed and his body was lying at Nowshahra, Baramulla. His body was handed over to the Boniyar Police Station.

The family of Sonaullah Malik also states that during the search for the victim, his brother, Abdul Aziz, was tortured and lost his eye-sight.

Two first information report's [FIR] have been lodged in this case. One, from the army, FIR no. 32/1995 at Boniyar Police Station that states that the victim died in counter insurgency⁴⁷. By communication dated 22 April 2014 from the Jammu and Kashmir Police a copy of the FIR, investigation related documents and first final report – filed in 2001 - were provided. But, also provided was a communication from the police dated 26 June 2004 which ordered a re-opening of the case. Second FIR from the family of the victim, FIR no. 42/1995 at Sheeri Police Station u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC]⁴⁸. By communication dated 22 April 2014 from the Jammu and Kashmir Police information was provided that the case had been closed by declaring the perpetrators as untraced. Further, a copy of the FIR was provided. But, by communication dated 6 January 2015 information is provided that the sanction in this case was declined. The decline of sanction letter was also provided.

A petition was filed before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 23/2006] for prosecuting the officials responsible⁴⁹. The Union of India and Commandant Major Achariya and CHM Mohammad Aslam filed a response before the High Court and alleged that Sonaullah Malik was a militant, had been killed in an encounter with the 28 RR on 14 and 15 May 1995 and that the FIR 42/1995 was filed under coercion of the then Station House Officer [SHO] Sheeri Police Station, based on an affidavit by the Lambardar and Chowkidar [Village guard] that states this. But, the family of the

47 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

48 Information on this FIR was sought through RTI on 7 October 2011. By communication dated 22 May 2012 from the Jammu and Kashmir Police it was stated that the case was closed declaring the perpetrators as untraced. Further, that the FIR itself was not traceable. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

49 Information on the petition number was sought through RTI on 16 February 2012. Information was provided.

victim states that this affidavit, not made before a magistrate, was in fact done under coercion by the army. Based on a lack of representation on two dates, the petition was dismissed.

The family of the victim approached the State Human Rights Commission [SHRC] on 15 July 2003. On 26 February 2005, the Inspector General of Police [IGP], Kashmir Zone, Srinagar, submitted before the SHRC that the body of the victim was brought to the Boniyar Police Station on 15 May 1995 by Major P. S. Lamba, Adjutant of the 28 RR. Further, that the investigation under FIR no. 42/1995 confirmed that the victim was killed in custody. A chargesheet had been prepared against the alleged perpetrators. The FIR by the army, no. 32/1995 was closed as not admitted. The SHRC issued its final decision on 9 November 2005 and concluded as per the investigations carried out that this was a case of custodial killing. Rs. 3,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders], subject to eligibility, were ordered.

Based on the non-implementation of the SHRC recommendations, a petition [Original Writ Petition (OWP) 725/2007] was filed before the High Court⁵⁰. On 15 December 2007 the High Court ordered that appropriate orders be passed based on the SHRC recommendations.

The family of the victim received Rs. 1,00,000 but no compassionate employment under SRO-43. In response to a RTI on Home Department empowered committee on SHRC recommendations, the Home Department by communication dated 24 March 2014 provided information on other cases, including the instant one. It was taken up in the 3rd meeting on 21 April 2009. The recommendations were accepted “under rules”. This would explain why only Rs. 1,00,000 was paid, but the compassionate employment should have also been granted.

The Ministry of Defence, in its affidavit before the High Court in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that sanction was declined vide letter dated 12 March 2009.

The Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecutions, stated on 6 September 2011 in relation to this case that sanction was declined.

As a chargesheet was produced against the alleged perpetrators and sanction for prosecution under AFSPA was sought a prima facie indictment of the alleged perpetrators is made out. The reasons given for denial of sanction are a reiteration that the victim was a militant and the baseless “It is likely that the case has been raised under pressure to malign the

image of the Security Forces for obtaining compensation”.

The Jammu and Kashmir Police communication of 26 June 2004 lays down the position of the police quite clearly. This communication, is in fact an order for re-investigation by Senior Superintendent of Police [SSP], Baramulla, Munir Khan. The order states that both FIRs were perused at the “ZPHQ” level and certain observations were made. The victim was a surrendered militant and had no further involvement in militancy. The Numberdar was a reliable witness who deposed that Major Chinapa told him to produce the victim in the army camp at Heewan. Major Chinapa assured him that the victim would be released within two or three days. The order states that the evidence of the Numberdar is “evidence which can be relied upon before any forum (court/commission)”. Further, mere registration of a counter FIR cannot affect the credibility of the case. “In the remote area the residents are under the psychological pressure from the Army especially during the present turmoil and one could hardly think of reporting the arrest by the force to the police”. The order also states that the two FIRs should have been investigated together and “there has been error of law/procedure” that this was not done. Further, the order states that “the identity of army officers/officials is established by the Numberdar and the complainant and more-over non explanation on the part of the army regarding injuries on the body of the deceased is credible evidence to proceed against the culprits”. As a result of the above observations, re-opening of both cases was said to have been desired by ZPHQ and thereby ordered on 26 June 2004. Therefore, the police, in 2004, and subsequently, until sanction for prosecution was declined, had found against the army in this case.

Finally, the non-seriousness of the police in the instant case can be gauged by the fact that on one hand the Government of Jammu and Kashmir has applied for sanction for prosecution under AFSPA based on a chargesheet being prepared against the alleged perpetrators, and on the other hand the police have closed the case by declaring the perpetrators as untraced, presumably after sanction for prosecution was declined. This action of the police is condemnable as the mere denial of sanction should not change the considered opinion of the police following their investigations.

Following the denial of sanction from the Ministry of Defence the police has chosen to close the case rather than agitating the matter in the court. The closure of the case as untraced is a cruel conclusion for the family of the victim who identified the alleged perpetrators and whose allegations were supported by the police investigations.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

50 Information on the petition number was sought through RTI on 2 July 2012. Information was provided.

Case No. 58Victim Details

Mohammad Ashraf Dar [Extra-judicial killing]
 Age: 30
 Son of: Mohammed Akbar Dar
 Resident of: Banyari Sharki, Hajin tehsil, Sonawari district

Alleged Perpetrators

1. Bashir Yaar, Government Gunman [Ikhwan]
2. Ama Chacha, Government Gunman [Ikhwan]
3. Bashir Gagur, Government Gunman [Ikhwan]
4. Mohiuddin Pitch, Government Gunman [Ikhwan]
5. Sul Karnayee, Government Gunman [Ikhwan]
6. Rehman Chabee, Government Gunman [Ikhwan]

Case Information

Reyaz Ahmad Dar was a militant belonging to the Hizbul Mujahadeen. He had trained in Pakistan. After his death, his family, consisting his brother and his wife, were harassed by the Ikhwan.

Ikhwans headed by Bashir Yaar, accompanied by other Ikhwan – Ama Chacha, Bashir Gagur; and Mehdeen Pitch, along with Sul Karnayee and Rehman Chabee [who did not have any weapons but was working for the Ikhwans] – always found a reason to search their house and torture them. These atrocities continued for four to five years.

On 4 May 1995, when the victim was returning home, he was surrounded by the above-mentioned Ikhwans and fired at. At least thirty bullets were shot at him. As soon as the family [Rafeeqa [wife], M. Jabbar Dar [Uncle], Azi [Mother] and Saleema [Sister] reached the place where the incident occurred, Mohammed Akbar Dar was rushed to the hospital at Hajin. But he died on the way. After performing the last rituals, he was buried in his local graveyard.

The wife of the victim, Rafeeqa Begum, gave the above statement to the IPTK on 29 May 2015.

The witness statement is clear, and cogent evidence is presented of the killing of the victim. But, the actual attack on the victim needs to be investigated further and further details need to be collected.

Case No. 59Victim Details

Nisar Ahmad Pencha [Abduction, Torture, Extra-judicial Killing]
 Age: 16
 Occupation: Tenth Grade Student
 Son of: Ghulam Mohammad Pencho

Resident of: Kulhama, District Bandipora

Alleged Perpetrators

1. Amma Kol, alias Cobra, Government Gunman [Ikhwan]

Case Information

On the intervening night of 5/6 May 1995, at about 3:00 am someone knocked on the door of Nisar Ahmad Pencho's house. His mother, Khatija Begum recognized the person, Shahnaz Ahmad Pencho their next door neighbor. As soon as she opened the door, however five gun men dressed in civilian clothes with their faces covered with a black cloth, entered the house. She recognized one of the gunmen, Amma Kol, a resident of their village.

The gunmen searched all the rooms in the house and finally dragged the victim and his brother, Abdul Majid Pencho out of their house. Their grandfather pleaded with the gunmen, to let the boys go, but Amma Kol refused. Nobody came to help the family due to the widespread fear of the Ikhwan in the area. On the same night, another young boy was abducted by Ikhwans in the nearby village of Kulhama. When they reached Garoora, the two boys – Majid and Nisar were separated, and Nisar was taken on a different route, according to Majid who was a witness to events up to this point. Majid was allowed to return to the family.

On the next morning, Zooni Begum a fisher woman came to the house and told Nisar Ahmed's mother that her son had been killed and his dead body was lying at Sangree Top, near Garoora. On the same day, the other kidnapped boy was also killed by gunmen affiliated to the same group of Ikhwans. It was widely believed locally that both boys had been killed at Javaid Shah's house [Ikhwan Camp] at Nadihal. That day the two dead bodies were brought to the village of Kulhama. Nisar Ahmed's dead body bore marks of torture. There were also about five bullet wounds on his body. This was the third death in their family. First, an older son Gowhar Ahmad, who was a well known militant was killed in an encounter with the Indian Army, then her husband was killed by the Ikhwans and lastly her 16 year old son was killed.

The mother of the victim, Khatija Begum, gave the above statement to the IPTK on 22 June 2015.

The witness statement provides evidence of the abduction, torture and killing by the alleged perpetrators. The eye-witness testimony of Abdul Majid Pencho in this case would need to be recorded. The allegations warrant further investigation.

Case No. 60Victim Details

Mohammad Yousuf Malik [Abduction, Torture, Extra-

judicial killing]
 Son of: Abdul Ahad Malik
 Resident of: Chiti Banday, Bandipora.

Alleged Perpetrators

1. Shabir Sofi, Government Gunman [Ikhwan]
2. Sattar Sofi, Government Gunman [Ikhwan]
3. Nazir Sofi, Government Gunman [Ikhwan]
4. Mansoor Sofi, Government Gunman [Ikhwan]
5. Sultan Ganai, Government Gunman [Ikhwan]

Case Information

On 16 May 1995, while Mohammad Yousuf Malik, an employee of the government Fisheries department, was working in his paddy fields, located near a huge Chinara Tree in the village of Brar, Bandipora his residence in Chiti Bandey [located about 5 kms away] was raided by members of the local Ikhwan group, headed by Shabir Sofi [nephew of notorious Ikhwan Kuka Parray]. An Ikhwan named Shahnawaz [Resident of Ajas] had recently been killed by militants, and the victim's house was raided by the local Ikhwan group in this regard.

Shabir Sofi, commander of the group, Sattar Sofi [Son of Mukhtar Sofi], Nazir Sofi [Son of Ahad Sofi], Mansoor Sofi [Son of Kamal Sofi] and Sultan Ganai [Son of Lassi Ganai] all residents of Brar, who were known to be working for the army's 13 Rashtriya Rifles [RR] camp in Brar were involved in the incident. On failing to find the victim at home, and after questioning his family members, they headed towards the paddy field in search of him. They met the victim, who was carrying his son Bilal on his shoulders, on the main road and assaulted him. They snatched the child, and threw him on the road. Thereafter they began dragging the victim barefooted towards the Ikhwan headquarters located in the residence of Shabir Sofi. The victim's wife Dilshada, and his two sisters Haneefa Bano and Roshia Bano were eye-witnesses to this. They gathered around and begged the Ikhwans to release him, but the Ikhwans fired shots at them, and did not allow them or his other family members to follow them. No one else dared to come forward to help them as this incident was taking place, though there were several witnesses.

Immediately thereafter, the family approached the head of the Ikhwans in the area, Usman Majid, resident of Garoora. They were informed that Usman Majid was not at his residence [also an Ikhwan Camp] though they suspected that he was avoiding meeting them. Finally at about 11 pm, Ghulam, Nabi brother of Usman Majid told the family to search for him at the camp of Javaid Shah, another local Ikhwan.

On next day 17 May 1995, the victim's wife Dilshada, his mother Misra Begum, and his grand-father tried to approach Javaid Shah [Son of Sikandar Shah,

Resident of Nadihal] at his residence which was also an Ikhwan camp. At first they were obstructed by other Ikhwans present at the camp, but after a prolonged wait and much insistence they were finally allowed to meet him. The victim's wife Dilshada appealed to him to release her husband. Javaid Shah assured her that the victim would be back at home by 4:00 pm, the same day. The family was convinced that the victim would be released soon, and they began the return journey. However, on their way back home, at Gujjar Basti, a fisherwoman met the family and told them that Mohammad Yousuf had been killed and his dead body had been found at Sangree colony, Wular Top. The family refused to believe her. But when they reached their home they found the dead body of the victim lying on the ground outside the house. There were severe torture marks visible on his body. There were widespread local protests against the Ikhwans after his death. His dead body was buried in his ancestral graveyard at Malik Pora.

The wife of the victim Dilshada Begum, gave the above statement to IPTK on 1 May 2015.

The eye-witness statement is clear, and cogent evidence is presented of the torture and killing by the alleged perpetrators. The allegations warrant further investigation. In addition, the role of the 13 RR at Brar camp in this killing, even under the international criminal law principles of command responsibility would need to be analyzed and further investigations are warranted.

Case No. 61

Victim Details

Tariq Ahmad Mir [Abduction and Extra-Judicial Killing]
 Age: 18
 Occupation: 9th Standard student
 Son of: Sonallah Mir
 Resident of: Potu Mohalla, Sadunara, Bandipora District

Alleged Perpetrators

1. Ayoub Wagay [also referred to as Ayoub Khan], son of Samad Wagay, Government Gunman [Ikhwan]
2. Fayaz Ahmad Dar [Operational name: Jambu], son of Rehman Dar, Government Gunman [Ikhwan]
3. Ghulam Mohammad Margoo [Operational name: Mohammad Pir], son of Gaffar Margoo, Government Gunman [Ikhwan]

Case Information

On 17 May 1995 at about 5:00 pm, Tariq Ahmad Mir was playing in his school compound when Ayoub Wagay, Fayaz Ahmad Dar and Ghulam Mohammad Margoo, all Ikhwan, came and told him that they had

to take him with them. Tariq Ahmad Mir was taken to Veer Khan, Sadarkote and shot dead. When Ghulam Mohammad Margoo was contacted by the family of Tariq Ahmad Mir he denied the arrest of Tariq Ahmad Mir.

The body of Tariq Ahmad Mir was found the following morning. The family states that Tariq Ahmad Mir was not involved in any subversive activity.

No First Information Report [FIR] was filed due to fear.

The family of Tariq Ahmad Mir has received Rs.1,00,000 ex-gratia government relief.

The family of Tariq Ahmad Mir gave a statement to the IPTK on 9 February 2012.

This case serves as an example of the manner in which fear faced by families results in absolute impunity for perpetrators of crimes.

The responsibility for this impunity necessarily is with the Jammu and Kashmir Police, which does not ensure the necessary space or protection for families to pursue justice.

Case No. 62

Victim Details

Mohammad Yaseen Dar [Abduction and Extra-Judicial Killing]

Occupation: Chemist, Islamabad

Son of: Mohammad Rajab Dar

Resident of: Brakpora, Islamabad District

Alleged Perpetrators

1. Major Anil Kumar, 2 Rashtriya Rifles [RR], Army, Camped at Khundroo
2. Major Khushwa, 2 Rashtriya Rifles [RR], Army, Camped at Khundroo
3. Mohammad Amin Bhat, Superintendent of Police [SP], Anantnag [reportedly died subsequently], Jammu and Kashmir Police

Case Information

The family of Mohammad Yaseen Dar states that on 12 June 1995 the victim was sitting in the compound of his house. Mohammad Yaseen Dar was unwell. Personnel of the 2 RR camped at Khundroo came to the house of Mohammad Yaseen Dar and abducted him to their camp.

The family of Mohammad Yaseen Dar visited the camp but the personnel of the 2 RR denied that the victim had been arrested. They then went to the Anantnag Police Station and filed a complaint, but it was not

recorded by the police. After 14 days the family was informed that a person had been shot at Bulbagh, Achabal. The family of Mohammad Yaseen Dar states that the person shot was Mohammad Yaseen Dar and the army had shot him claiming to have killed a militant and then kept some ammunition on him.

The family of Mohammad Yaseen Dar faced constant threat from the army to withdraw the case. Further, on one occasion, about 14 army vehicles took the family to the office of the then SP, Anantnag, Mohammad Amin Bhat where they were told by the SP that they could forgive the guilty officers and take money. The family of Mohammad Yaseen Dar states that they took Rs.50,000 from the army but received no relief under law.

The family of Mohammad Yaseen Dar gave a statement to the IPTK on 19 April 2012.

First Information Report [FIR] no.213/1995 u/s 302 [Murder], 344 [Wrongful confinement for ten or more days] Ranbir Penal Code, 1989 [RPC] was filed at the Anantnag Police Station on 26 June 1995 and places the date of abduction as 12 June 1995.⁵¹

By communication dated 19 May 2012 from the Jammu and Kashmir Police information was provided that the case was closed as chargesheeted but that sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] was declined in relation to Major Anil Kumar and "Major Kashroo" of 2 RR. A copy of the FIR was provided on 21 May 2012. But, contradictorily, by communication dated 16 November 2013 from the Jammu and Kashmir Police it was stated that the file had been "sent" for government sanction, suggesting that no decision had been taken. By communication dated 16 May 2014 it was stated that the Case Diary file was presently lying with first appellate authority, Police Headquarters, Jammu and Kashmir along with all relevant documents. By communication dated 18 December 2014, information was provided that enclosed was the letter seeking sanction. But, the only documents attached were the: 15 June 2012 communication from Deputy Superintendent of Police [DSP], Anantnag transferring the CD file of the case to Deputy Inspector General of Police, Police Headquarters [PHQ], due to RTI and first appeal filed by ITPK, AND communication dated 23 May 2014, once again from the DSP to PHQ, seeking the CD file back.

By letter dated 9 July 2012, a copy of the decline of sanction for prosecution was provided. The decline of sanction, dated 25 February 2009, from the Ministry of Defence to the Jammu and Kashmir Home Department, states that the allegations against the alleged perpetrators are false. Further, that the

⁵¹ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

deceased was a militant and in possession of arms and was killed in a legitimate encounter. The filing of the FIR after a gap of 14 days “itself indicated an act of hindsight”. The allegation of torture was said to be contrary to the medical report that stated that the individual died due to a bullet injury.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that sanction was declined in February 2009.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction was sought and was awaited.

The Ministry of Defence, in response to an RTI on 10 January 2012 on sanctions for prosecution, stated in relation to this case that sanction was declined on 25 February 2009. Further, that: “the deceased was a militant in possession of arms and killed in a legitimate encounter”.

It is noteworthy that it took the Jammu and Kashmir Police, Government of Jammu and Kashmir and Ministry of Defence 14 years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice. Further, as per the 16 November 2013 position, it appears the police is disorganized as it has taken contradictory position on the denial of sanction.

The available documents suggest that a court-martial was not conducted in this case by the army.

Further, the defects in investigation that the Ministry of Defence raises could be attributed to the faulty investigations carried out by the Jammu and Kashmir Police that may have been influenced by Mohammad Amin Bhat, SP, Anantnag who the family of the victim state was involved in the cover up of the case.

The family of the victim also states that they did try to file a complaint immediately after the abduction of the victim but the police refused to file a FIR.

Case No. 63

Victim Details

1. Hilal Ahmad Nasti [Extra-Judicial Killing]
Age: 22
Occupation: Messenger, Ellaquai Dehati Bank, Srinagar

Son of: Ali Mohammad Nasti
Resident of: Mohalla Syed, Kadipora, Islamabad District

2. Mohammad Ramzan [Extra-Judicial Killing]
Resident of: Siligam
3. Ghulam Qadir Bhat [Extra-Judicial Killing]
Resident of: Hutmara, Islamabad District
4. Farooq Ahmad Wani alias Masali [Extra-Judicial Killing]
Age: 19
Occupation: Carpet Weaver
Resident of: Panzmulla, Islamabad District

Alleged Perpetrators

1. Commanding Officer [Colonel] K. K. Sharma, 1 Rashtriya Rifles [RR], Army, Camp Aishmuqam
2. Major Jagtar Singh, 1 Rashtriya Rifles [RR], Army, Camp Aishmuqam

Case Information

Hilal Ahmad Nasti of Kadipora, Islamabad was staying at the house of his friend, Ghulam Qadir Bhat, in Hutmara on the night of 13 and 14 June 1995. The house was cordoned by the army unit of the alleged perpetrators, headed by Commandant K. K. Sharma and Major Jagtar Singh. Hilal Ahmad Nasti and Ghulam Qadir Bhat, were abducted and their dead bodies were recovered from the Lidder river on 23 June 1995. Mohammad Ramzan of Siligam was also similarly abducted and killed. Their body parts were cut up and thrown in the river.

Subsequently, after Farooq Ahmad Wani alias Masali of Panzmulla, Islamabad gave his statement before the Sub-Judge, Islamabad, he too was killed.

First Information Report [FIR] no. 208/1995 u/s 302 [Murder], 343 [Wrongful confinement for three or more days] Ranbir Penal Code, 1989 [RPC] was registered in the Anantnag Police Station in relation to the abduction and killing of Hilal Ahmad Nasti and the abduction of Ghulam Qadir Bhat⁵². The FIR has a notation that the case was closed by declaring the perpetrators as untraced on 24 July 2012. By communication dated 16 May 2014 from the Jammu and Kashmir Police the following information was provided: “The investigation of these cases has been closed as untraced. Unless and until the Hon'ble court admits/agrees with the the investigation of the case, the same is supposed to be subjudice before the Court of law.”

52 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. RTI filed on 18 December 2012 to Jammu and Kashmir Police regarding custodial killings in Jammu and Kashmir between 1989 and 2012. By communication dated 27 February 2013 a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. By communication dated 16 November 2013 from the Jammu and Kashmir Police a copy of the FIR was provided.

It appears that FIR no. 55/1995 u/s 302 [Murder] and 58/1995 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] were registered at the Pahalgam Police Station⁵³. FIR no. 55/1995 and FIR no. 58/1995 relate to the finding of two unidentified dead bodies. Information was provided that both FIR's were closed by declaring the perpetrators as untraced. By communication dated 16 May 2014 from the Jammu and Kashmir Police the following information was provided: "The investigation of these cases has been closed as untraced. Unless and until the Hon'ble court admits/agrees with the the investigation of the case, the same is supposed to be subjudice before the Court of law." This was in relation to both FIRs which appears to be contradictory as the final reports were provided.

In relation to the killing of Farooq Ahmad Wani, FIR no. 92/1996 was registered at the Pahalgam Police Station u/s 302 [Murder], [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition / possession / manufacture / sale of prohibited arms/ammunition] / 27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959⁵⁴. The FIR states that the victim was abducted from the residence of Mohammad Shabhan Wani [the victim was his adopted son] at Panzmulla on the intervening night of 5 and 6 August 1995 by unidentified gunmen. His dead body was found on the road at village Chandigam. Information was provided that the FIR was closed by declaring the perpetrators as untraced.

The Station House Officer [SHO] of Anantnag Police Station has certified that Hilal Ahmad Nasti was not involved in any subversive activity.

Similarly, a certificate has also been issued in relation to Ghulam Qadir Bhat by the letter of the Senior Superintendent of Police [SSP], Anantnag of 17 February 2003. It should also be noted that the 17 February 2003 letter of the SSP, Anantnag, refers to the unit of the alleged perpetrators as being "9th RR". This letter also states that FIR no. 208/1995 stands closed as chargesheeted and sanction is being sought.

The post-mortem report on Hilal Ahmad Nasti confirms that his head, and limbs, were cut.

The family of Hilal Ahmad Nasti approached the State Human Rights Commission [SHRC] on 4 July 2001, and a final decision was given on 22 May 2003. Rs. 5,00,000 relief and compassionate employment under SRO-43 [Statutory Rules and Orders] were recommended. Further, the concerned police authorities were asked to peruse the matter of

sanction for prosecution.

The family of Ghulam Qadir Bhat also approached the SHRC and on 26 November 2008 the final decision recommended relief of Rs. 4,00,000 and recommended that the culprits be prosecuted.

The family of Hilal Ahmad Nasti gave a statement to the IPTK on 13 May 2012.

In addition to the letter of the SSP, Anantnag that states that a chargesheet had been filed and sanction sought [though the information provided by the Ministry of Defence on cases where sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] had been sought does not list this case], the two documents that may be analysed are the Section 164 [Power to record statements and confessions] Criminal Procedure Code, 1989 (CrPC) statement of Farooq Ahmad Wani, and the SHRC decisions.

Farooq Ahmad Wani, in his statement, states that he was abducted on 13 and 14 June 1995. On the same night, the other three victims were arrested. On the following day, they were interrogated together. Subsequently, Mohammad Ramzan and Ghulam Qadir Bhat [but here a reference is made to "Ghulam Rasool" who would appear to be the same as Ghulam Qadir Bhat] were stripped, tied to a tree, shot dead, and then their heads and limbs were cut and they were thrown into the river. Hilal Ahmad Nasti and Farooq Ahmad Wani were then taken back to the camp. Five days later, on 22 and 23 June 1995 they were once again taken out. They were stripped. Hilal Ahmad Nasti was asked to climb onto a stone and then he was shot. His head was cut and then thrown into the river. Farooq Ahmad Wani was then taken to another place, but he slipped and fell into the river and he managed to escape.

The SHRC decision of 22 May 2003 begins by recounting the allegations. The SHRC decision recounts that the body of Hilal Ahmad Nasti was recovered from the Lidder river on 23 June 1995. The limbs of the body could not be found though. The decision also noted that the custodial death of the victim was proved. The decision notes that the police authorities informed the SHRC that during the course of investigations it was proved that the alleged perpetrators were involved in the crime and that a chargesheet was finalized and sanction for prosecution under AFSPA was sought and was pending. Further, that the Hilal Ahmad Nasti was not having any affiliation with any militant organization and was not involved in any militancy related activities. The SHRC decision of 26 November 2008, in relation to Ghulam Qadir Bhat, is very similar in its conclusions

53 Information on these FIR's was sought through RTI on 2 July 2012. By communication dated 24 August 2012 from the Jammu and Kashmir Police copies of both FIR's were provided. Further information sought through RTI on 15 October 2013 on both FIRs. By communication dated 16 November 2013 from the Jammu and Kashmir Police a copy of the final report in both cases was provided.

54 Information on this FIR was sought through RTI on 2 July 2012. By communication dated 24 August 2012 from the Jammu and Kashmir Police a copy of FIR and final report was provided.

except that there appear to be no references to the issue of sanction for prosecution under AFSPA.

The Section 164 CrPC statement of Farooq Ahmad Wani, and the SHRC decisions, clearly indict the alleged perpetrators. While the police authorities state that sanction for prosecution under AFSPA had been sought in relation to the killing of Hilal Ahmad Nasti, the official documents from the Ministry of Defence do not list this case. Plus RTI information suggests that the cases were closed.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army. Therefore, an inference could be drawn that the instant case has not been prosecuted, and has instead been closed, and neither has any court-martial been conducted, thereby ensuring absolute impunity for the alleged perpetrators.

Case No. 64

Victim Details

Manzoor Ahmad Shah [Abduction, Torture, Extra-judicial killing]

Age: 35

Son of: Mohammad Abdullah Shah

Resident of: Asham, Sumbal, Sonawari, Bandipora District

Alleged perpetrators

1. Fayaz Ahmad Mir alias Fayaz Nabdi, Government Gunman [Ikhwan]
2. Ayoub Khan/Mir alias Ayoub Nabdi, Government Gunman [Ikhwan]
3. Mohammad Afzal Mir, Government Gunman [Ikhwan]
4. Ghulam Nabi Khan, Government Gunman [Ikhwan]
5. Farooq Gada, Government Gunman [Ikhwan]

Case Information

On 6 July 1995 at around 9:30 pm, the house of the victim was cordoned by army personnel as a part of a search operation/raid. There was a knock on the main gate, and a group of about 10 Ikhwan, headed by Fayaz Nabdi, and including Ayoub Khan [alias Ayoub Nabdi], Mohammad Afzal Mir [alias Afzal Nabdi], Ghulam Nabi Khan, and Farooq Gada, who were based in Nabdi Mohalla, Safapora entered into the house. Ayoub Nabdi assaulted the victim's wife, Hamida Begum and she fell to the ground. Afzal Mir began forcibly dragging the victim to the gate of his house, while continuously beating and demanding money from him. The victim's mother and wife pleaded with the alleged perpetrators to release him, but to no avail.

The victim's family had been subject to frequent

harassment, threats and extortion demands in the past from the same group of Ikhwan. The cause of the harassment was a dispute over the ownership of hundreds of willow trees which were planted on the victim's land, but which the Ikhwan demanded that he should "purchase" by paying them. The victim had also become a recent target of more intense harassment as he had participated in sloganeering and protests against the killing of two local militants [Ghulam Ahmed Khan and Shabir Ahmed Sheikh] by the Army. The Nabdi Mohalla based Ikhwan group was known to have close connections to the Army camp at Safapora, and army personnel from this camp had accompanied the Ikhwan on previous 'raids' of the victim's house. On one prior occasion unidentified gunmen had fired several shots at the victim, but he had managed to escape unharmed.

After the victim was picked up from his home, on 6 July 1995, his family members did not immediately take any action due to their fear of further adverse reprisals, and in the hope that the victim would be released after a few hours. However, when he did not return until the next morning, the victim's wife, accompanied by his mother and his two minor children proceeded to the residence of local Ikhwan Ghani Shala, resident of Bonapora, Asham, which functioned as an Ikhwan camp, to seek his intervention for the victim's release. They were told that Gani Shala was not at home, and they continued their search through out the area, contacting various local personages including the religious leaders for help.

On the next morning, the victim's wife and sister went to the house of Ikhwan Ashraf Kachhur in Nabdi Mohalla and pleaded with him to inform them of the victim's whereabouts. Ashraf Kachhur told them that he would enquire about the matter with Fayaz Nabdi who was their Commander, and left the room. After a lapse of time, Ashraf Kachhur returned and informed them that Fayaz Nabdi had dumped the victim's dead body at Safapora. In a distraught state, the victim's family members returned home. There they were met by a resident of Kohistaan colony Safapora, who told them that the victim's body was lying in Safapora Chowk. Two colleagues of the victim proceeded to Safapora and brought the body back to his home. The dead body bore a bullet injury on the neck, marks of severe torture all over the body, and the genitals had been severed. Manzoor Ahmad Shah's family registered FIR [First Information Report] at Police Station Safapora. No further action was taken.

The wife of the victim, Hameeda Begum gave the above statement to IPTK on 26 June 2015.

The witness statement is clear, and cogent evidence is presented of the abduction and subsequent killing by the alleged perpetrators. The allegations warrant further investigation.

Case No. 65*Victims Details*

1. Ghulam Nabi Lone [Extra-Judicial Killing]
Occupation: Assistant Engineer R&B Circle Srinagar/Budgam
Son of: Ghulam Muhammad Lone
Spouse: Rohi Jan
Resident of: Malik Sahib, Nowhatta, Srinagar
2. Shakeel Ahmad [Extra-Judicial Killing]
Occupation: Electrical Engineer, Power Development, Kishanpur
Son of: Sofi Muhammad Abdullah
Resident of: Ibrahim Colony, near Bypass crossing, Hyderpora, Srinagar
3. Ghulam Mohi-ud-din Zargar [Extra-Judicial Killing]
Occupation: Shopkeeper [served as guide]
Resident of: village Laynalab, Budgam District

Alleged Perpetrators

1. Major Bhim Singh, 34 Rashtriya Rifles [RR], Army, Camp Beerwah
2. Major S.S. Grewal, Adjutant, 34 Rashtriya Rifles [RR], Army, Camp Beerwah

Case Information

On 23 July 1995 the victims, along with a colleague named Dr. Naseer Ahmed Laway, who survived the incident, were on an official survey assignment to Uri when the personnel of the 34 RR opened unprovoked fire upon them killing them on the spot. Later the troops apologized for the killings.

The family of Shakeel Ahmad gave a statement to the IPTK on 26 November 2011. The family of Ghulam Nabi Lone gave a statement to the IPTK on 29 November 2011.

First Information Report [FIR] no. 116/1995 u/s 302 [Murder], 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 3 [Licence for acquisition and possession of fire arms / ammunition] / 25 [Punishment for certain offences] Arms Act, 1959 was filed at the Beerwah Police Station on 24 July 1995 through a written letter from the 34 RR Camped at Beerwah that during cross firing with militants the victims had died⁵⁵. On 30 July 1995, Dr. Naseer Ahmed Laway filed his version of events before the police station [though the Station House Officer (SHO) of Budgam Police Station stated before the High Court that it never received the letter from Dr. Naseer Ahmed Laway of 30 July 1995]. The 13 June 2012 communication from the Jammu and

Kashmir Police states that the case was closed by declaring the perpetrators as untraced on 17 October 1995.

A petition was filed before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 603/1998] by the wife of Ghulam Nabi Lone for compensation⁵⁶. Investigations were conducted by the police, and the investigations by the police were finally closed and a closure report was filed before the Chief Judicial Magistrate [CJM], Budgam on 26 April 2010. The case was considered by the police as closed by declaring the perpetrators as untraced. A status report filed by the SHO, Beerwah Police Station dated 12 September 2007 stated that it was Major S.S. Grewal's unit that took part in the operation. The position of the 34 RR, and the Union of India, before the High Court is in line with the written report filed before the police station on 24 July 1995 i.e. that the victims were killed in cross-firing with militants, a claim the family of the victim rejects. It is suggested that the delay in Dr. Naseer Ahmed Laway filing his version before the police station suggests that it was a fabricated version. The State of Jammu and Kashmir and the SHO, Budgam Police Station stated that firstly the SHO, Budgam Police Station should not have been made a party as the FIR was filed before the Beerwah Police Station. Secondly, that they had no role in the incident, no knowledge of the incident, and the case for compensation was not made out.

The matter is sub-judice before the Chief Judicial Magistrate, Budgam.

The unsigned letter of Dr. Naseer Ahmed Laway of 30 July 1995, as reproduced in the petition before the High Court, states that at about 1:15 pm on 23 July 1995 there was unprovoked firing upon his group, including the victims.

Of interest is his testimony that an officer named Major Bhim Singh "expressed deep regrets" for the killing and stated that it was a "misunderstanding". Dr. Naseer Ahmed Laway also refers to a Brigadier, but not by name, who also expressed similar sentiments.

The alleged perpetrators are not clearly indicted in the instant case, but material on record does raise a suspicion and further investigations would be warranted.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

In light of the material on record, further investigations must be carried out and the case reopened.

55 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 17 May 2012. By communication dated 13 June 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

56 Information on the petition number was sought through RTI on 16 February 2012. Information was provided.

Case No. 66Victim Details

Ghulam Mohammad Pencho [Abduction, Torture, Extra-judicial killing]

Age: 50

Occupation: Fisherman

Son of: Abdullah Aziz Pench

Resident of: Kulhama, District Bandipora

Alleged Perpetrators

1. Amma Kol, alias Cobra, Government Gunman [Ikhwan]
2. Abbas, Government Gunman [Ikhwan]
3. Bashir Khan, Government Gunman [Ikhwan]
4. Ahad Kol, Government Gunman [Ikhwan]

Case Information

Ghulam Mohammad Pencho, a fisherman by profession, had eight children, four sons and four daughters. One of his sons, Gowhar, was an active militant with Hizbul Mujahideen and was known as "King of Wular". On 14 October 1994 he was killed in an encounter at Boniyar. After Gowhar's death Ikhwan raided the victim's house many times. During one of these raids, the victim's sister was tortured severely for several hours.

On 3 August, 1995 while collecting sand from the river at Kulhama, Ghulam Mohammad Pencho was attacked by a group of Ikhwan as named above [alleged perpetrators 1-4]. A local fisher woman was an eye-witness to the attack. The victim managed to escape detection by submerging himself under water. However, the Ikhwan continued to search the area and found him after about an hour. The group of Ikhwan stripped him naked and began torturing him on the spot. He was then taken to the Ikhwan Headquarters at Nadihal, located in the residence of Javid Shah. Top Ikhwan Commanders like Usman Majeed, Javid Shah, Mir Niyaz, Shafiq Pandith, Bashir Khan, Ghulam Hassan Qureshi frequently operated from this camp.

On learning about his torture and abduction, Ghulam Mohammad Pencho's daughter along with other villagers marched in a procession into the Nadihal Ikhwan Camp and demanded that the Ikhwan commanders namely Usman Majeed and Javid Shah order Ghulam Mohammad's immediate release. The Ikhwan in the camp premises, fired in the air to disperse the crowd, but the villagers refused to budge and forcibly dragged the half dead Ghulam Mohammad out of the camp to a boat nearby. He was in great pain and his body bore marks of torture. His kidneys, lungs, head and legs appeared to be most severely damaged. He succumbed to his injuries.

The wife of the victim, Khatija Begum, gave the above statement to the IPTK on 21 June 2015.

The witness statement provides evidence of the torture and killing by the alleged perpetrators. The eye-witness testimony in this case would need to be recorded. The allegations warrant further investigation.

Case No. 67Victim Details

Ghulam Mohammad Dar [Abduction, Extra-judicial killing]

Age: 42

Occupation: Farmer

Son of: Sanaullah Dar

Resident of: Wangipora, Sumbal, Bandipora district

Alleged Perpetrators

1. Ghulam Mohiuddin Kana, Commander, Government Gunman [Ikhwan]
2. Rashid Bucha, Government Gunman [Ikhwan]
3. Ali Kulloo, Government Gunman [Ikhwan]
4. Manzoor Nabdi, Government Gunman [Ikhwan]
5. Fayaz Ahmad Mir alias Fayaz Nabdi, Government Gunman [Ikhwan]
6. Shafi, Government Gunman [Ikhwan]

Case Information

On 21 August 1995 evening, the victim was at home when the Ikhwan came. The Ikhwan were Rashid Bucha, resident of Shilwat, Ali Kulloo, resident of Dempora, Sumbal, Manzoor Nabdi, Fayaz Ahmad Mir alias Fayaz Nabdi, and Shafi. They caught the victim, and dragged him out and took him to the house of a migrant Pandit Janki Nath, where the head of Ikhwan, Ghulam Mohiuddin Kana was present. Within half an hour, the victim was killed. There were no bullet marks on his body but there were some torture marks on the victim's body. Then there was a huge protest against the Ikhwan. The Ikhwan told the family of the victim to take the victim's dead body otherwise they would burn it.

The wife of the victim, Ashia Begum, gave the above statement to the IPTK on 24 April 2015.

The witness statement is clear, and cogent evidence is presented of the killing of the victim. Ashia Begum is an eye-witness and her statement carries great weight. The allegations warrant further investigation

Case No. 68

Nisar Ahmed Najar [Abduction, Torture, Extra-judicial killing]

Age: 13

Occupation: Student

Son of: Abdul Rehman Najar

Resident of: General Bus Stand, Islamabad, Islamabad district

Alleged Perpetrators

1. Sheikh Tahir alias Tahir *Fuf*, Government Gunman [Ikhwan]
2. Sameer Darzi alias Babloo, Government Gunman [Ikhwan]
3. Showkat Muqam, Government Gunman [Ikhwan]
4. Ghulam Rasool Wagay, alias Kach Gour, Government Gunman [Ikhwan]
5. Seth Gujjar, Government Gunman [Ikhwan]

Case Information

In 1995, Ikhwan were forcing Ghulam Rasool Najar, elder brother of the victim, to work with them and join them. These Ikhwan were under the command of Tahir “Fuf”, resident of Khanabal; Liyaqat, resident of Police Colony Islamabad; and Seth Gujjar, resident of General bus stand, Islamabad. These three were the top line commanders of the Ikhwan in Islamabad and they were sending their personnel to force the victim to join Ikhwan. But Ghulam Rasool Najar refused to do so. At that time, his family was living in Dangerpora, Islamabad. Ikhwan often came to his home, sometimes in the night too; and they would beat the family. It compelled him to leave his house. Accordingly, he migrated to Nawakadal, Srinagar.

On 26 August 1995, Ikhwan, namely Sameer Darzi, son of Abdul Majeed Darzi resident of Dangerpora, and others came to his house at about 9:30 am and took his 13 year old brother Nisar Ahmad who was leaving for school then. He was taken to the Kadipora Ikhwan camp. There he was tortured to reveal his brother's whereabouts and where he had hidden the weapons. When Nisar was beaten a lot, he told them that the weapons are at home. Then the Ikhwan brought him back home and searched the house. These Ikhwan were Showkat Muqam [resident of Aishmuqam]; Tahir Fuf; Ghulam Rasool Wagay alias Kach Gour [resident of Martiyar, Islamabad]; and Seth Gujjar [resident of Lal Chowk, Islamabad] this time. But they couldn't find anything there.

While searching the house, they kept his mother, namely Mahtaba, and sister in one room. Tahir Fuf beat his mother with a stick and Sameer Darzi beat his father Abdul Rehman Nazar and kicked him also on abdomen. Then the Ikhwan took his brother back to Malakhnagh area and shot him on the road. He received many bullet injuries and this caused his death. One of the fingers of his hand had also been cut. His death created cardiac problems for the father of the victim because of which he also died in 2007. Ghulam Rasool Najar came to know about this through his family. He came to Islamabad on the death of his brother and then he returned to Srinagar.

Ghulam Rasool Najar, gave the above statement to the IPTK.

Ghulam Rasool Najar is not an eye-witness to the killing of his brother. Nonetheless, the details he has provided are strong and appear credible. Further investigations would be necessary, and in the instant case there clearly appears to be evidence available to indict the Ikhwan involved in the killing of the victim. The police does not appear to have filed a FIR in this case.

Case No. 69

Victim Details

Saja [Extra-Judicial Killing]

Resident of: Village Guard, Tral, Pulwama District

Alleged Perpetrators

1. Company Commander [Assistant Commandant] Jai Singh [Operational name: Jameel Khan], 151st Battalion Border Security Force [BSF], Camp Tral

Case Information

First Information Report [FIR] no.46/1995 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Tral Police Station⁵⁷. By communication dated 19 May 2012 from the Jammu and Kashmir Police information was provided that on 28 August 1995 one Gaffar Sheikh, son of Wahab Sheikh, Lambardar [Numberdar, de facto revenue authority in the village] lodged a written report in Tral Police Station that on the same date troops of 151st Battalion BSF, Tral Camp, conducted a search operation in the village Shikargarh and during the search of one Ghulam Rasool Wani, Company Commander Jai Singh was questioned by Saja, the wife of the house owner on why he was visiting daily as there were no militants in the house and no one in the family was a militant. The officer got angry and shot her dead. It was alleged that the search was a pretext to harass the two daughters of the victim. A chargesheet was produced in court against him on 6 May 2002.

By further communication dated 9 July 2012 from the Jammu and Kashmir Police, a copy of the FIR and some investigation records were provided.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 in relation to this case that sanction was sought from the Ministry of Home Affairs for the alleged perpetrator on 7 January 2002 and it was awaited.

⁵⁷ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir seven years to investigate and process the case for acquiring sanction for prosecution under AFSPA, which apparently helped the perpetrators in evading justice.

Further, it appears that the Ministry of Home Affairs has taken ten years to decide on the issue of sanction for prosecution.

The IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

The IPTK sought information on 10 January 2012 on all inquiries and court-martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir. No information was provided.

Case No. 70

Victim Details

Mohammed Ashraf Teli [Torture, Extra-judicial killing]
Age: 30
Occupation: Masonry
Son of: Abdul Salam Teli
Resident of: Aunta Bhawan, Soura, Srinagar district

Alleged Perpetrators

1. Yadav, Commandant, 12th Battalion Border Security Force [BSF]
2. Abdul Rashid Khan alias Rashid Billa, Station House Officer [SHO], Soura Police Station, Jammu and Kashmir Police

Case Information

At about 5 pm on 21 September 1995, Mohammed Ashraf left his house for a haircut. When he reached the 90 feet road in Soura, the 12th Battalion BSF stopped him. They took Ashraf's identity card and asked him where he was going. Ashraf replied that he was going to get a haircut. The BSF personnel allowed him to go.

The barber later told the family, after Ashraf had died, that when Ashraf was at the barbershop, BSF sent a boy [interviewee was unaware of the name of the boy] to the barbershop to tell Ashraf to come and collect his identity card. Ashraf told the barber that he would pay him later; first, he would go and get his card from the BSF.

As soon as Ashraf reached the place where they had taken his card, he was picked up by the BSF and taken to the Soura Police Station. After he was picked up from the 90-feet road, a few people witnessed the incident and they came and informed the

interviewee's wife, Hajra, about the same. As a consequence, she, along with her brother-in-law, went to the police station to request them to release the victim; they were told that he would be released the next day.

At this point, interviewee was unaware that the victim had been killed. The next day, the interviewee went to the police station, where he found out that a BSF Commandant, Yadav, had actually picked him up. Yadav took him inside a bunker and told him that the victim possessed arms. The interviewee replied by saying that if the victim was a militant then Yadav could kill both of them right now. He was then made to sit inside a tent, which had utensils and firewood, probably a mess. A BSF personnel was present with him.

There was then a BSF camp within the Police Station. His son was taken to the BSF camp, which is within the lawn of Police station Soura.

On the same day at the police station, the victim was beaten up and his body was burnt. In the evening he was taken to Karan Nagar [interviewee is unaware of where the victim was taken within Karan Nagar], where he was again burnt and eventually killed. The next morning, at about 6 am, his dead body was taken to the temple of Vecharnag and then it was taken to the house of a Kashmiri Pandit, namely Mohan Lal. The BSF then blew the house up. From the outside of the house, they shot at its walls. In this way, they staged a fake encounter.

Along with Ashraf, one other person [whose name the interviewee didn't know] was taken to Karan Nagar. He was a truck driver. While they were burning Ashraf's body, they threatened to do the same to the truck driver unless he agreed to cooperate and provide information.

In the locality, some people informed the interviewee about the death of the victim. He went to the police station along with his neighbors. There was a huge procession outside the police station. He met SHO Rashid Billa there, who called him inside. Billa asked him to sit with the Munshi. Then he asked him to give a statement saying that the victim was of unsound mind and was killed in an encounter. The interviewee got angry; he abused the SHO and told him that he was a fool. He told the SHO "if his son [victim] had been of unsound mind, then how would he have gotten married". This made Billa angry and he instead wrote in his report that the victim was a militant, a member of the Harkat-ul-Ansar.

The victim had been kept there in the police station and even burnt, so the interviewee was certain that Rashid Billa was as complicit in the entire crime as the BSF.

The interviewee's neighbors saw the victim's body and asked the former not to look at it. They said that

the entire body had been burnt and he would not be able to bear the hurt he would feel upon seeing it.

The case in the High Court was closed saying that the victim was a militant belonging to the Harkat-ul-Ansar.

The father of the victim, Abdul Salam Teli, gave the above statement to the IPTK on 24 March 2013.

First Information Report [FIR] no. 138/1995 under section 302 [murder] Ranbir Penal Code [RPC] dated 23 September 1995 was filed at Soura Police Station after the family sought the intervention of the lower court. The FIR mentions the name of Yadav but not Rashid Billa. Further information on this FIR was sought through RTI dated 15 July 2015.

On file is a writ petition [OWP 1016/1997] filed in the Jammu and Kashmir High Court. Notice was issued on 14 July 1997. The present status of this petition is not known.

On file is the decision of the State Human Rights Commission [SHRC] in the case dated 2 January 2012. Before the SHRC, the Inspector General of Police stated that on 22 September “2005”, Company Commander of F Company, 12th Battalion BSF lodged a written report in the Soura police station that they had arrested a militant of Harkat-ul-Ansar and he led them to a migrant house in Vicharnag Colony to produce weapons. Unknown militants attacked while the search was taking place and the victim himself fired from a hidden weapon that he recovered. He was killed in the retaliatory firing. FIR no. 136/1995 at Police Station Soura was filed. The SHRC then conducted its own investigations where it was found that there were no signs of an encounter as described by the police. There were no bullet marks on the walls of the hideout that would necessarily have been there if there was an encounter as stated in FIR no. 136. Report was also sought from Senior Superintendent of Police, Criminal Investigations Department [CID], Special Branch. The report submitted states that “discreet enquiries” confirm that the victim was going for a haircut on “31.05.2011” but was en route apprehended by 12th Battalion BSF and taken to Soura Police Station for questioning. He died in interrogation and then the dead body was taken to the house of one “Sohan Lal” at Vicharnag and from there it was handed over to the family. The victim was not involved in militancy. The SHRC accepted the version of events of the family and recommended relief and that the investigation in FIR 138 be carried out by an officer not below the rank of Deputy Superintendent of Police.

Despite the above decision, on 9 April 2013, the empowered committee of the government that considers the SHRC recommendations rejected the recommendations in this case based once again on the same position of the Inspector General of Police as was taken in the SHRC.

In this case the testimony of the family of the victim is

confirmed by none other than the CID Special Branch. Therefore, while the Inspector General of Police maintains that the victim was a militant killed in an encounter, the Special Branch, after “discreet enquiries” confirms that the victim was killed during interrogation. The alleged perpetrators and the police itself stand indicted in this case.

Case No. 71

Victim Details

Mohammad Kamal Sheikh [Abduction, Torture, Extra-judicial killing]

Occupation: Government Teacher

Son of: Haji Gani Sheikh

Resident of: Chattergul, Kangan, Ganderbal district

Alleged Perpetrators

1. Bahadur Khan, Government Gunman [Ikhwan]
2. Mir Zaman, Government Gunman [Ikhwan]
3. Saddam, Commander, Government Gunman [Ikhwan]

Case Information

Mohammad Kamal Sheikh was kidnapped in October 1995 after prayers from home. He was taking dinner. Four Ikhwans entered, including Bahadur Khan, Mir Zaman and Saddam. All of them were working with the Indian Army at Wusan Camp [i.e. the camp was placed at Wusan].

At about 9 pm, they entered the house and asked Kamal to accompany them to the house of Bashir Ahmad Wani, who was also an Ikhwan. They first knocked on the door and the interviewee saw the three Ikhwans. From home, they dragged the victim barefeet to Nallan Brahmsar. The interviewee requested the renegades to free her husband but they did not pay any attention to her request. All their neighbors, namely Ghulam Rasool Sheikh, Ali Mohammad Sheikh, Misri, and Shameena assembled in the house; they all protested against the kidnapping of Master Kamal.

They took Kamal to the Nallah Brahmsar and shot him dead there. The entire village came out of their houses and went in search of Kamal but they came back home empty. On the second day of Kamal Sahab's kidnapping, villager Bilal Ahmad saw the dead body of Kamal at Nallah Brahmsar. Kamal had been brutally tortured and torture marks were visible on his body.

Before they received the dead body, the villagers Ghulam Rasool Sheikh, Gani Sheikh, Ali Mohammad Sheikh etc. approached the Wusan Army Camp demanding to know the whereabouts of Kamal. There, they met top Ikhwan commander Saddam, resident of Chattergul. He assured the villagers and his relatives that they would free Kamal Sahab, but would need Rs.

8 lakhs as extortion money. The relatives agreed to pay the amount for his release. An army brigadier told the brother of the victim, Ghulam Rasool Sheikh, to search for his brother in the surrounding areas of the village. But the villagers couldn't find him and came back disappointed with the suggestion of Brigadier. Then they started searching around the village and that is when they found the bullet-ridden body of Kamal at Nallah Brahmsar.

When the villagers collected the dead body of Mohammad Sheikh, who had been brutally tortured and killed in the custody of Ikhwan, a strong protest took place in the area. Kamal was buried in the local graveyard.

The wife of the victim, Khati Begum, gave the above statement to the IPTK on 4 May 2015.

The victim's statement is clear, and cogent evidence is presented of the torture by the alleged perpetrators. The allegations warrant further investigation particularly on the role of the army camp in this case.

Case No. 72

Victim Details

Ayaz Ahmad Wani [Abduction, Torture, Wrongful Confinement and Extra-Judicial Killing (Custodial Killing)]

Occupation: Owner of forest lease firm Gani Joo Assan Joo

Son of: Abdul Rashid Wani

Resident of: Bankoot, Banihal

Alleged Perpetrators

1. Deputy Superintendent of Police [DSP] Sonaullah Naik [then Station House Officer (SHO), Ramban Police Station], Jammu and Kashmir Police
2. Additional Superintendent of Police [ASP] Shafkat Ali Watali, Ramban, Jammu and Kashmir Police
3. Muhammad Ashraf Malik Special Police Officer [SPO], Jammu and Kashmir Police
4. Muhammad Rafiq, Special Police Officer [SPO], Jammu and Kashmir Police
5. Nazir Ahmad Wani, Civilian

Case Information

On 3 November 1995, Ayaz Ahmad Wani was picked up by SHO Sonaullah Naik, on the orders of ASP Shafkat Ali Watali. He was taken to Ramban Police Station and tortured for four days by Inspector Sonaullah Naik, ASP Shafkat Ali Watali and others. Ayaz Ahmad Wani died on 10

November 1995 at the Government Medical College Hospital, Jammu. All the above named alleged perpetrators were implicated in the custodial killing⁵⁸. First Information Report [FIR] no.65/1998 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Ramban Police Station⁵⁹. By communication dated 15 June 2012 from the Jammu and Kashmir Police information was provided that the case was subject to a Revision Petition filed in the Jammu High Court and that the Case Diary file had been called. At the same time, an enclosure within this RTI response, from the Chief Prosecuting Officer, Ramban, dated 26 May 2012 states that the case was sub-judice before the Sessions Judge, Ramban. Further, information was also provided to the effect that this case was investigated by the Crime Branch, Jammu, and then a chargesheet was produced before the Additional Sessions Judge, Ramban on 26 June 2007. By communication dated 20 November 2013 it was stated that the case was sub-judice before the Sessions Court, Ramban and the next date in the matter was fixed for 25 November 2013 for prosecution witnesses. A copy of the FIR and chargesheet was provided. The present status of the case is not known

It is noteworthy that it took the Jammu and Kashmir Police 12 years to file a chargesheet in this case. Further, the case continues to proceed at a slow pace which may have assist the alleged perpetrators in evading justice. Further, as per publicly available information, alleged perpetrator Shafkat Ali Watali received the Director General of Police's Commendation Medal for 2003.

Case No. 73

Victim Details

Abdul Ahad Baba [Abduction, Torture, and Extra-Judicial Killing]

Age: 43

Occupation: Shopkeeper

Son of: Ghulam Ahmed Baba

Resident of: Goshbugh, Pattan, Baramulla District

Alleged Perpetrators

1. Rashid Ganie, Government Gunman
2. Ali Bengali, Government Gunman

Case Information

Abdul Ahad Baba was affiliated to the Jamaat-i-Islami. Raids at his home started in 1990. Persons from the Wusan Army Camp [interviewee did not remember which regiment was there] would raid the house at night and cordon off the entire area. So, he decided to

58 Greater Kashmir, <http://www.greaterkashmir.com/news/2007/Apr/30/custodial-killing-accused-shifted-to-jammu-12.asp>, 30 April 2007.

59 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. Further information sought through RTI on 15 October 2013.

stay with a relative in another village. Consequently, mostly when the Army would raid the house, he wouldn't be there. Even when he was at home a few times, the Army did not arrest him. 15-20 of them would remain outside the house the entire night. Government gunmen would accompany them on these raids; one such gunman was Rashid Mir resident of Shilwat. Neither the Army officers nor the gunmen would ever come inside the house or harass the family members. They would come home 1-2 times a month. This continued till 1995.

In 1994, there was a joint crackdown/operation by the Wusan Camp and the Hamray Camp during which the victim was at home. They were all assembled at the government high school. He was arrested from there after being identified as a Jamaat-e-Islami member. From there they took him to a house nearby, which belonged to Abdul Aziz Hurra, for interrogation. They [interviewee does not remember who the officers were] kept him for 2-3 hours and beat him up badly. They gave him electric shocks all over his body and forced him to drink water infused with chillies. He returned home 2-3 hours later. During this time, he had been told that he would now have to appear at the Wusan Camp every week, when someone would come and call him. Accordingly, the victim continued to appear every week.

However, 10-15 days later, he was picked up from home by the Wusan Camp and kept there for 4 days. When he returned he was in a very bad state. A thin metal wire had been inserted into his penis [interviewee does not know who was responsible for this torture].

On 9 November 1995, the victim left home at 3 pm for Srinagar. He was travelling by a tonga. Neighbours told the family that government gunman had started following him right from home. When he reached the bridge at Hamray, he was stopped by Rashid Ganie and Ali Bengali, resident of Naidkhai. They took all the money that he was carrying [Rs. 1.5 lakh]. They then took him to Andergam, where they took him to an apple orchard, tied him to an apple tree, and shot him to death [interviewee does not know who shot him].

The family found out 1 hour later when some villagers brought home his dead body. They then buried him. They did not go to the police. They did not get a death certificate made. They did not receive any compensation.

After this, they had no interaction with the army or with any of their gunmen.

The son of the victim, Manzoor Ahmed Baba, gave the above statement to the IPTK on 7 July 2015.

The witness statement is clear, and cogent evidence is presented of the killing of the victim by the alleged perpetrators. But, the allegations warrant further investigation particularly on whether the army had any

role in his killing. The sequence of events detailed above – including severe torture – indict the army resident in the area. Therefore, in his actual killing as well it needs to be investigated whether the army also had a role. Further, it needs to be ascertained which army camp had effective control over the government gunmen responsible for the killing of the victim.

Case No. 74

Victim Details

Syed Fazal Hussain [Torture, Extra-judicial killing]
Resident of: Choolan, Kalsa, Uri, Baramulla District

Syed Bagh Hussain [Torture, Extra-judicial killing]
Son of: Syed Fazal Hussain
Resident of: Choolan, Kalsa, Uri, Baramulla District

Syed Mir Hussain [Torture, Extra-judicial killing]
Resident of: Choolan, Kalsa, Uri, Baramulla District

Syed Hussain [Torture]
Age: 62
Resident of: Choolan, Kalsa, Uri, Baramulla District

Ghulam Hassan [Torture]
Resident of: Choolan, Kalsa, Uri, Baramulla District

Alleged Perpetrators

1. Chauhan, Colonel, Commanding Officer, 4 Sikh Light Infantry
2. Captain Manjeet, Kanari Camp, 4 Sikh Light Infantry
3. "Dadu" [Nickname], Officer, Kanari Camp, 4 Sikh Light Infantry
4. Sarmukh Singh, Havaladar, Baz Post, 4 Sikh Light Infantry

Case Information

Syed Muneer Hussain gave the below statement to the IPTK

Syed Fazal Hussain, Syed Bagh Hussain and Syed Mir Hussain, all resident of Choolan Kalsa, were killed on 14 November 1995

Syed Fazal Hussain was a shopkeeper and stayed close to the army post at Ghati. His son Syed Muneer Hussain is the main witness in this case. Syed Mir Hussain is also a relative of Syed Fazal Hussain.

Prior to the incident, around 10-15 day before, the personnel of 4 Sikh Light Infantry came and took the three victims, along with Syed Hussain, aged 62, and Ghulam Hassan. Ghulam Hassan was the step brother of Syed Fazal Hussain. Syed Hussain was also related to Syed Fazal Hussain. They were taken by the army first to Baz Post in car and then to Kanari camp by foot. They were kept at Kanari camp for 4 days and tortured severely. The family was not

allowed to meet them. They met the Station House Officer [SHO] Ashraf Karnai [Mohamamd Ashraf Mir from Karna. He was Deputy Superintendent of Police in 2008]. He was SHO of Police Station Uri. The army brought the abducted back and handed them over to Police Station Uri and they confirmed that they were not involved in any militancy. The father of the witness was in very bad shape and could not walk. This took place in October sometime.

Then, once again the personnel of 4 Sikh LI took four of them. The father of the witness was not taken as he was in poor shape. They were taken to Baz Post which is 12 km from Ghati post. They were taken walking and brought back in car. They were told at the Baz post that they would have to come and register their attendance every alternate day for about 20 days. But, two days later, the army came again and this time picked up all five of them. They were taken in the evening at about 4 pm, kept for the night at the Baz post. They were not tortured. They were left again in the morning. Then, Ghulam Hassan and Syed Hussain left the village. The three victims decided not to since they felt they had not done anything wrong.

The alternate day in the evening they were once again picked up. This was the last time and they were then killed. The witness went to the Ghati post the next day when they did not return. The personnel there said don't worry. They did not allow him to go to Baz post. But, subsequently, he saw SHO Ashraf, his personnel, accompanying the army up towards Baz post. In the evening, at 5 pm, the dead bodies were returned to some 5 people of the village and they were told by the police and army to accept the bodies or they would be thrown in the river. All the family members of the victim had now come out. The Sikh LI personnel and SHO Ashraf were present there itself. The army version is that they were released and then they exploded in an IED blast [as stated in the FIR – 150/1995 at Uri Police Station. Further information on this FIR was sought through RTI dated 15 July 2015]. Clearly they had been blasted as parts of their bodies were missing. But, the family believes they were killed in custody before. The FIR filed is only under the Explosives and Substance act. The three of them were then buried in one grave. Two days later they went to the Uri police station. SHO Ashraf said he got the bodies and he handed them over and that was it. Other people informed the family that they had been taken to a bunker, put inside and the army had then itself activated the explosive device and killed them.

The family did a dharna at the Baramulla DC office as well. After this the witness left for Delhi and came back after three years. The families received Rs. 1 lakh ex-gratia relief each but no Statutory Rules and Orders [SRO43][compassionate employment] appointment.

There used to be a Havaldar incharge of Ghati Post,

a JCO Subedar named Makhan Singh, and Sarmukh Singh, Havaldar at Baz Post. Sarmukh Singh is the one who came and picked up the victims from home the last time. Captain Manjeet (Ghatak) and a renowned tortured named Dadu were at Kanari Camp. But the incharge was Colonel Chauhan. The witness heard that Manjeet had died later.

In addition to the above, the witness Muneer Hussain filed a petition – OWP 1166/2015 – before the High Court of Jammu and Kashmir. Objections were filed by the army where they stated that 4 Sikh Light Infantry was deployed in Uri sector from August 1994 to October 1996. Further that the victims were put to death by “terrorists”. The army denies picking up the victims. The case remains pending in the High Court.

Most crucial in this case is the eye-witness testimony. The allegations warrant further investigations.

Case No. 75

Victim Details

Abdul Aziz Bhat [Abduction, Extra-judicial killing]

Age: 47

Occupation: Tailor

Son of: Abdul Razaq Bhat

Resident of: Tulmulla, Ganderbal district

Alleged Perpetrators

1. Rashid Kanbay, Commander, Government Gunman [Ikhwan], Hakeem Gund Ikhwan camp
2. Bashir Khanday, Government Gunman [Ikhwan]
3. Raheem Kachur, Government Gunman [Ikhwan]
4. Mome Ikhwan, Government Gunman [Ikhwan]
5. Fayaz, Government Gunman [Ikhwan]
6. Lasa Tulmulla, Government Gunman [Ikhwan]
7. Tariq Gada, Government Gunman [Ikhwan]

Case Information

Abdul Aziz Bhat was a member of the Jamaat-e-Islami. On 2 December 1995, the victim was coming out from a Masjid after prayers when some Ikhwans, who were in a mini bus, picked him up. Many shopkeepers of the area witnessed the incident. The alleged perpetrators named above abducted the victim.

The family searched for him in the Wakura, Ikhwan Camp, Safapora Ikhwan Camp and Hakeem Gund Ikhwan Camp, 8 kilometers away from their home. Then the family came to know that he was in Hakeem

Gund Ikhwan Camp and they approached Kuka Parray, who was the head of Ikhwans. There the son and uncle of the victim got a letter for the release of the victim. When they went to Hakeem Gund Ikhwan Camp, they handed over the letter to Rashid Kanbay, who was group commander at that time. He refused and said, "I don't want this letter, I want money". The family gave him Rs. 30000 but came to know that the victim had been killed and his body was found in Chanduna, near the Jammu and Kashmir Bank. When the son and uncle saw his body, it was full of bullets – one was lodged in the left side of chest. A woman who was from Tulmullah, Ganderbal, recognized the body. The Ikhwans responsible for the killing are still alive.

The son of the victim, Bashir Ahmad Bhat, gave the above statement to the IPTK on 28 April 2015.

The witness statement is clear, and cogent evidence is presented of the killing of the victim. The allegations warrant further investigation.

Case No. 76

Victim Details

1. Fazal Hussain Dar [Extra-Judicial Killing]
Occupation: Senior Inspector, Cooperative Bank, Doda
Spouse: Nazira Begum
Resident of: Malni Pranu, Bhaderwah, Doda District
2. Fareed Hussain Dar [Extra-Judicial Killing]
Son of: Fazal Hussain Dar, Nazira Begum
Resident of: Malni Pranu, Bhaderwah, Doda District
3. Mohammad Hussain Lone [Extra-Judicial Killing]
Occupation: Farmer
Spouse: Shaheena Begum
Resident of: Malni Pranu, Bhaderwah, Doda District
4. Talib Hussain Lone [Abduction]
Son of: Ghulam Nabi Lone
Resident of: Malni Pranu, Bhaderwah, Doda District

Alleged Perpetrators

1. Deputy Inspector General [DIG], Kuldeep Khoda, Udhampur-Doda Range [as of 31 May 2012 ex-Director General of Police [DGP], Jammu and Kashmir]
2. Mohammad Ashraf, Special Police Officer [SPO] and Village Defence Committee [VDC] head
3. Abdul Sattar, associate of SPO Mohammad Ashraf
4. Tariq Hussain, associate of SPO Mohammad

Ashraf

Case Information

The victims were abducted on 3 January 1996. Fazal Hussain Dar, Fareed Hussain Dar and Mohammad Hussain Lone were shot dead but their bodies were not found. Talib Hussain Lone managed to escape.

First Information Report [FIR] no. 7/1996 u/s 306 [Abetting suicide], 307 [Attempt to murder], 364 [Kidnapping/Abducting to murder], 201 [Causing disappearance of evidence/giving false information] Ranbir Penal Code, 1989 [RPC] was filed at the Bhaderwah Police Station on 3 January 1996. On 8 April 1996, the family of Fazal Hussain Dar approached the National Human Rights Commission [NHRC]. On 10 March 1997, the family of Fazal Hussain Dar requested the Chief Minister, Jammu and Kashmir to hand over the investigations in the case to the Central Bureau of Investigations [CBI]. As a consequence of the matter being before the NHRC, on 24 June 1997 the then Director General of Police [DGP], Jammu and Kashmir, Gurbachan Jagat initiated a re-investigation into the case by the Crime Branch. On 16 January 1998, Additional Superintendent of Police [ASP] Bachan Singh Chowdhury submitted a progress report that indicted Kuldeep Khoda, the then Deputy Inspector General [DIG] of Doda-Udhampur range. On 12 November 1998, ASP Shikha Goel confirmed the earlier progress report and added that there had been tampering by the police in the case⁶⁰. On 4 December 1999, the Senior Superintendent of Police [SSP], Crime and Railways, Jammu sent a letter to the then DGP, Jammu and Kashmir. The letter states that the NHRC referred the matter to the DGP, Jammu and Kashmir to determine the facts of the case. During the investigations, the Crime Branch was "deputed to Session's Court Bhaderwah to assess from the concerned court about the progress of case". Copies of the testimony before the Court were collected and placed on the file by the Crime Branch. The witnesses were once again summoned and individually re-examined by the Crime Branch. The witnesses denied having any grievance in the matter. Further, the witnesses denied having statements recorded before the Crime Branch. Shikha Goel, ASP, Crime and Railways, Jammu, could not "lay her hand on any concrete result regarding the involvement of senior Police officers". It was concluded that at the advanced stage of the trial the Crime Branch could not re-examine witnesses formally and it would be advisable to wait for the outcome of the trial. Finally, it was stated that "if approved" a "comprehensive report" may be sent to the NHRC.

60 Indian Express, <http://www.indianexpress.com/news/civilians-killed-15yr-report-back-to-haunt-j&k-dgp/831717/0>, 14 August 2011.

On 23 December 1996, police investigations in the case led to the filing of a chargesheet against SPO Mohammad Ashraf, Abdul Sattar and Tariq Hussain before the Chief Judicial Magistrate [CJM], Doda. On 23 December 1996, the case was committed to the Sessions Court, Bhaderwah. On 1 July 1998 charges were framed by the Sessions Court, Bhaderwah against SPO Mohammad Ashraf, Abdul Sattar and Tariq Hussain. Abdul Sattar and Tariq Hussain were proceeded with u/s 512 [Record of evidence in absence of accused] Criminal Procedure Code, 1989 [CrPC] as they were absconding. On 8 November 1999, the Sessions Court, Bhaderwah, acquitted SPO Mohammad Ashraf, Abdul Sattar and Tariq Hussain claiming that the witnesses in the case turned hostile.

On 14 August 2011, the Indian Express reported the case and for the first time indicated the involvement of DGP Kuldeep Khoda in the crime, based on the Crime Branch progress report of 16 January 1998.⁶¹ Following the disclosure of the details of the Crime Branch progress report of 16 January 1998, Nazira [widow of Fazal Hussain Dar] and Shaheena [widow of Mohammad Hussain Lone] filed a petition before the High Court [Original Writ Petition (OWP) no. 1258/2011], seeking re-opening of the case and fresh investigations by the CBI. Further, it was stated that while the subject matter of the petition comes under the jurisdiction of the Jammu wing of the High Court, the case may be heard by the Srinagar wing, as lawyers in Jammu were reluctant to take up this case of human rights violations by higher officials. Further, high fees were demanded which the petitioners were unable to pay. Finally, the petitioners came in contact with the Association of Parents of Disappeared Persons [APDP], which agreed to assist with the case. The matter was thereby heard by the Srinagar wing of the High Court. The following is a summary of the proceedings to date:

- On 23 September 2011, Justice Hasnain Masoodi of the High Court of Jammu and Kashmir invited Mohammad Ishaq Qadri, Advocate General to “assist” in the matter. No notices were issued.
- On 30 September 2011, the Advocate General was not present. A. M. Magray, Additional Advocate General told the court that the Advocate General was unaware of the previous order of the court.
- On the following date, the Advocate General appeared in court and stated that on the following date the full record of the case, including the proceedings at the NHRC and the entire Crime Branch record would be provided.
- For six months the Crime Branch records were not produced but on 16 April 2012, a transfer petition [7/2011] filed by SPO Mohammad Ashraf and was admitted and the case was shifted to Jammu.

- On 20 April 2012, the matter was listed but the concerned advocate was unable to travel to Jammu due to the short notice provided. An adjournment was sought through the son of Fazal Hussain Dar.
- On 25 May 2012, the date on which the matter was listed, the case was not taken up. On the same day, the Advocate General placed written objections to the petition on record.
- On 29 May 2012, without a copy of the written objections being provided to the petitioners, nor they being given an opportunity of being heard, the petition was dismissed. As Justice Masoodi was not in Jammu on 29 May 2012, the decision was read out in court by the then acting Chief Justice, Virender Singh.

The case is now being referred to the Supreme Court.

On 19 April 2012, the son of Fazal Hussain Dar approached the State Human Rights Commission [SHRC] seeking investigations by the SHRC into the matter.

On 13 August 2012, the advocate for the complainant had sought an opportunity to advance further arguments on 22 August 2012. While this request was granted, no hearing was held on 22 August 2012. Instead of providing notice for the subsequent hearing on 12 September 2012, the SHRC chose to dismiss the case.

As per publicly available information, alleged perpetrator Kuldeep Khoda was awarded the Presidents Medal for Distinguished Service in 1999, the Director General of Police's Commendation Medal for 2001 and the Sher-e-Kashmir Medal for Meritorious Service in 2004. Earlier, he had received the Police Medal for Meritorious Service in 1993.

The manner in which the petition/complaint before the High Court and SHRC were dismissed is unfortunate and requires to be closely analysed.

Justice Hasnain Masoodi, the High Court judge hearing the case, appears to have acted in much haste and thereby denied the petitioners a fair hearing. The entire record of proceedings before the High Court is an indictment of the judiciary in the instant case. As the matter will be placed before the Supreme Court, a limited analysis of the judgment will be carried out here.

First, Justice Masoodi chose to invite the Advocate General to “assist” the bench instead of issuing notices, observing that this was a sensitive case.

Second, rather than provide assistance, the Advocate General did not initially appear before the Bench and subsequently despite agreeing to submit the complete Crime Branch record in the case, did not do

61 Indian Express, <http://www.indianexpress.com/news/civilians-killed-15yr-report-back-to-haunt-j&k-dgp/831717/0>, 14 August 2011.

so for eight months until the case was dismissed. The Crime Branch record was never presented before the High Court.

Third, the Chief Justice of the High Court admitted a transfer petition filed by SPO Mohammad Ashraf, despite him not yet being a party to the proceedings. Further, on 16 April 2012 the Acting Chief Justice of the High Court accepted the transfer petition, despite the Chief Justice having earlier allowed the petition to be heard in Srinagar. The objections filed by the petitioners were disregarded.

Fourth, the matter was listed as part-heard [perhaps to retain the case with Justice Masoodi], was taken up within *four* days effectively precluding the petitioners counsel from appearing in the matter in Jammu.

Fifth, the matter was adjourned to 25 May 2012 but was not taken up. On the same day, while written objections were filed by the Advocate General, the record of the case including the Crime Branch reports were not submitted.

Finally, the case was dismissed, within four days, without the petitioners being heard on the objections filed by the Advocate General. Further, the dismissal came within a day of the Government of Jammu and Kashmir recommendation of Kuldeep Khoda, and three days before his retirement as DGP, Jammu and Kashmir, as the candidate for the post of the first Chief Vigilance Commissioner [CVC] of Jammu and Kashmir. The timing of the dismissal and his recommendation for the post of CVC raises doubts on the judicial process in this case. Particularly as, during the pendency of the case in the High Court, Kuldeep Khoda retained his position as the DGP of the State.

The judgment of 29 May 2012 is itself marred by faulty judicial reasoning and a failure to appreciate the facts of the case, and unfortunately, a failure to even appreciate the facts of the proceedings before it. For example, no mention is made of the fact that the Advocate General was ordered to provide the complete record of the cases. Further, Justice Masoodi appears to have disregarded a crucial legal question in the case. It was the obligation of the police and prosecuting authorities, whether the Crime Branch, the investigating authority that prepared the chargesheet or the Chief Prosecuting Officer, to bring the fact of the parallel investigations carried out by the Crime Branch to the attention of the Sessions Court, Bhandarwah. The first progress report of the Crime Branch was completed **before** the charges were framed by the Sessions Court, Bhandarwah. By not doing so, the Sessions Court, Bhandarwah was allowed to proceed to trial in a case where relevant incriminating evidence against the alleged perpetrators was collected in a parallel investigation. The Crime Branch investigations should have been the only basis for the trial as the parallel investigation ordered by the NHRC, the reasoning for which was endorsed by the then DGP, Jammu and Kashmir, was

to address the concerns of the families of the victims.

The fear faced by the witnesses before the trial court was wrongly considered by Justice Masoodi. Justice Masoodi disregarded the fear of the petitioners and other witnesses [which did lead to witnesses turning hostile before the trial court] and instead stated that they did not complain of any coercion, undue influence and intimidation before or during the trial. It is only logical that a fearful witness, having little trust in a police agency, would not reveal any intimidation being faced.

Justice Masoodi callously observed that the families of the victim failed to appeal the trial court verdict for 11 years but failed to make a similar observation on the Government of Jammu and Kashmir which should have filed an appeal.

In addition the points noted above, Justice Masoodi has also wrongly interpreted the progress report of 16 January 1998 by the Crime Branch. Below is a summary of the crucial evidence in the case that strongly indicts the alleged perpetrators of the crime, particularly Kuldeep Khoda:

- Nazira, wife of Fazal Hussain Dar and mother of Fareed Hussain Dar, testified that on 3 January 1996, at about 9:20 pm, three or four masked men abducted her husband and son. During the trial court proceedings, Nazira was considered to have turned hostile as she in an earlier statement to the police had specifically identified SPO Mohammad Ashraf, whereas in court she did not. But, her statement on the point has been consistent before the Crime Branch and the trial court. While this contradiction does raise some questions, a proper, independent investigation might well provide the necessary answers.
- Talib Hussain, testified that on 3 January 1996, at about 9:30 pm, he and Mohammad Hussain Lone, were working when unidentified persons abducted them and put them in a vehicle. Subsequently, some more persons were brought and put in the vehicle. They were taken to the Chenab River at some unknown place. When he was taken to the bank of the river, he was pushed into the river but he managed to hold on to a stone and survive. He then heard gunshots nearby. The witness managed to escape and subsequently he found out that SPO Mohammad Ashraf and his associates were responsible for the abduction and the killing of the other three victims.
- Shadi Lal, driver of the police vehicle that was used during the commission of the crime, stated that he knew SPO Mohammad Ashraf as someone who was close to the police.

On 1 January 1996, in the evening, he accompanied SPO Mohammad Ashraf, Abdul Sattar and Tariq Hussain from Doda to Batote, to hand over some store articles to Kuldeep Khoda. Following this, SPO Mohammad Ashraf met with

Kuldeep Khoda for about an hour at his residence. Subsequently, they returned to Ramban and spent a night there.

On 2 January 1996, they went back to Batote. SPO Mohammad Ashraf once again met Kuldeep Khoda. The witness also met alleged perpetrator no.1 and told him that he needed to go to Doda and requested that the others be therefore provided a different vehicle. DIG Kuldeep Khoda did not accept this and asked the witness to continue with the group till 4 January 1996. On the same day, the group went to Doda and on the way they picked up two persons unknown to him. Further, at Police Post Assar, SPO Mohammad Ashraf and the two persons unknown to him procured arms and ammunitions and reached Doda on the evening of 2 January 1996.

On 3 January 1996, the group proceeded to Bhaderwah and reached by the evening. Then after some work was conducted they proceeded back to Doda. When they reached Pranu at about 9:00 pm, SPO Mohammad Ashraf asked the witness to stop the vehicle. After some time, one person was brought into the vehicle. Subsequently, three more persons were brought into the vehicle. SPO Mohammad Ashraf along with his two associates and PSO's boarded the vehicle and asked the witness to proceed towards Doda.

On reaching Pul Doda, SPO Mohammad Ashraf asked the witness to proceed towards Thatri as he had to perform some important work. Accordingly the party proceeded towards Thatri. When they reached near Prem Nagar, SPO Mohammad Ashraf stopped the vehicle and got down along with the civilians and his associates and asked the witness and PSO's to remain there on the road till he returned back and did not allow them to accompany him. The witness and PSO's remained on the roadside waiting. After half an hour of their departure the witness heard the sound of gun shots from the Chenab river side. SPO Mohammad Ashraf and his associates then came to the vehicle after about one hour but none of the civilians were along with them. They then proceeded and got down at the Kishtwar Police Station. The witness went to his residence for the night.

On 4 January 1996, SPO Mohammad Ashraf wanted to proceed to Batote and meet with Kuldeep Khoda. On reaching Batote, SPO Mohammad Ashraf went to DIG Kuldeep Khoda's residence and met with him. The witness then himself met Kuldeep Khoda and apprised him about the whole story and informed him that SPO Mohammad Ashraf and his associates had abducted civilians and then murdered them near Thatri and their dead bodies were thrown in the Chenab river. The witness further stated that DIG

Kuldeep Khoda ordered the witness to produce SPO Mohammad Ashraf and his associates to SSP, Doda [Javed Makhdoomi] on 5 January 1996.

On reaching Doda, SPO Mohammad Ashraf went to meet SSP Doda and he was directed to remain present in District Police Line Doda and ordered him not to move outside and also keep the vehicle in District Police Line Doda. The witness later on himself appeared before the SSP, Doda and told him about lifting of the civilians by SPO Mohammad Ashraf and his associates and then subsequent killings.

- Baldev Raj, deputed as a PSO to SPO Mohammad Ashraf, stated that on 1 January 1996, he went towards Batote with Shadi Lal [driver], another PSO Somnath and SPO Mohammad Ashraf. On reaching Batote, SPO Mohammad Ashraf went to meet DIG Kuldeep Khoda. They then proceeded to Ramban.

On 2 January 1996 they proceeded to Batote where a police vehicle carrying arms and ammunition from Ramban also reached Batote and was produced before Kuldeep Khoda, who inspected it. SPO Mohammad Ashraf once again met DIG Kuldeep Khoda and the vehicle carrying the arms and ammunition was then dispatched for Assar village. The group then proceeded to Doda, along with two persons unknown to the witness but known to SPO Mohammad Ashraf. On reaching Assar village, SPO Mohammad Ashraf and his associates went to the Police Post Assar where they were provided arms and ammunition. They then proceeded to Doda.

On 3 January 1996, the group left Doda and reached Bhaderwah by the evening and then onwards to Parnu. On the way to Parnu SPO Mohammad Ashraf stopped the vehicle and brought two persons, one of whom was placed in the vehicle and the other was taken back. Subsequently, three more persons were brought and put in the vehicle. On reaching Pul Doda, SPO Mohammad Ashraf asked the driver to turn the vehicle towards Thatri. On reaching Thatri the vehicle was asked to be stopped by SPO Mohammad Ashraf where he along with his associates got down and took the civilians along with them. SPO Mohammad Ashraf asked the PSO's and driver to remain present in the vehicle. After half an hour the witness heard gunshots from the Chenab river. After one hour SPO Mohammad Ashraf and his associates returned. The civilians were no longer with them. The party then left for Kishtwar.

On 4 January 1996 they went from Kishtwar to Batote. On reaching Batote, SPO Mohammad Ashraf met with Kuldeep Khoda. Following this meeting, the driver Shadi Lal also met with DIG

Kuldeep Khoda. Following this meeting, SPO Mohammad Ashraf once again met DIG Kuldeep Khoda. They then proceeded to Doda where SPO Mohammad Ashraf and his associates went to Police Post Assar where everyone except SPO Mohammad Ashraf deposited their arms.

The above summary of evidence strongly points to the involvement of DIG Kuldeep Khoda in planning and executing the crime, notwithstanding some of the minor contradictions that do exist in the testimony. The evidence suggests a close proximity between Kuldeep Khoda and SPO Mohammad Ashraf. Further, DIG Kuldeep Khoda appears to be a key player at various points in the operation that resulted in the killing of the three persons – from meeting with SPO Mohammad Ashraf prior to the killings, inspecting arms, and meeting with SPO Mohammad Ashraf after the killings. What is at least certain from the above evidence is that the role of DIG Kuldeep Khoda cannot be conclusively ruled out. Further, it is unlikely that he would not have known of the reasons and purpose behind the crime.

The proceedings before the NHRC may also be considered. On 4 April 2000, the NHRC closed the matter on the basis that a chargesheet had been filed. But, on 19 June 1997, the NHRC noted that the investigations in the case were not satisfactory, and that the then DGP agreed with the NHRC opinion. It was also noted that the DGP would ensure an impartial, effective and expeditious *further investigation with the leave of the Court before which the matter was pending. The results of such investigations were to be placed before the Commission.* This clearly is a reference to the alternate Crime Branch investigations that were carried out but it appears that the NHRC was never apprised of the Crime Branch investigations and in fact on 4 April 2000 the NHRC does not appear to have any knowledge of the fact that the trial had also been completed. Based on the available record it is clear that the DGP, Jammu and Kashmir despite admitting that the police investigations were not satisfactory still proceeded with their own investigations for trial without factoring in the Crime Branch investigations eventually resulting in the acquittal. Therefore, the Crime Branch investigations were suppressed before the Sessions Court, Bhaderwah, NHRC and the High Court.

The crux of the case of the complainant before the SHRC was that the parallel Crime Branch investigation ordered into the case that implicated Kuldeep Khoda was never considered by the Trial Court, the NHRC or the High Court.

The SHRC was the first forum to have the opportunity to consider the Crime Branch investigations. The SHRC had a unique opportunity to critically study the Crime Branch investigations but instead chose to mechanically understand the import of these documents.

Despite an order from the SHRC to provide the final Crime Branch report, a so called “final” report of 4 December 1999 was provided. This was not a final or comprehensive report and did not provide cogent reasons to negate the earlier findings implicating Kuldeep Khoda. More crucially, this report was written when the accused Kuldeep Khoda was the Inspector General, Crime Branch. Therefore, the SHRC chose to rely on a document whose contents were directly under the control of an accused.

In light of the above, and considering the circumstances and time in which the trial was conducted, where it is likely that witnesses would feel great fear, the instant case should be re-investigated and if necessary, re-tried.

Case No. 77

Victim Details

Ghulam Hassan Lone [Abduction, Extra-judicial killing]

Age: 38

Occupation: Teacher, Bandena Primary School [He was also an activist for the Jamaat-i-Islami]

Son of: Abdul Sattar Lone

Resident of: Braav Bandena, Pulwama district

Alleged Perpetrators

1. Mushtaq Ahmad Ganai alias “Mush Ganai”, Government Gunman [Ikhwan]

Case Information

On the 3 January 1996, Ghulam Hassan Lone, along with his wife Shahmali and his sixteen year-old niece Gulfam, were burning “kaath” [used to make coals for Kangris] near their house. At around 10 to 10:30 am, some army personnel, all uniformed and fully armed, belonging to Haal-Gabarpura Camp, in Shopian, came in two vehicles, a TATA vehicle and a gypsy and cordoned the house of the victim, signaling to the victim with their hands to approach them. No Ikhwan accompanied them. The leading army person asked the victim his name, which the victim told him. At this point, the wife of the victim and his niece were behind the victim. The army personnel ordered the victim to get inside their vehicle but the victim resisted. He said he wanted to say goodbye to his family first, but the army personnel did not allow him to do so and forced him into their vehicle.

In the meantime, villagers gathered and stopped the vehicle. The army responded by firing in the air and went ahead with the victim in their vehicle. One of the friends of the victim, Ghulam Mohammad Bhat, a teacher by profession, asked the army personnel where to look for the victim in case his relatives wanted to visit him, to which the army men responded that their party was from Haal-Gabarpura Camp.

The relatives of the victim went to Haal-Gabarpora everyday for the next few days to visit him and requested the armed forces to release him. On 7 January 1996, the victim was released from the camp.

His brother Ghulam Mohammad Lone, his cousin Abdul Aziz Bhat and nephews Bashir Ahmad Ganai and Mushtaq Ahmad Ganai [different from the alleged perpetrator] accompanied the victim on his way back in a taxi and a tractor. The relatives had taken a taxi and a tractor because there was a strike due to a mine blast in the neighboring village of Kulpura. Further, they were compelled to do so because their request to the police to give them transportation was denied.

The victim was unable to walk properly as a result of being tortured. While on their way, about 1 km from the camp, the victim and his relatives were surrounded by 15 or 16 armed men led by a Mushtaq Ahmad Ganai also known as “Mush Gani”, a notorious Ikhwan of the area. They stopped the taxi and tractor at gunpoint and asked the victim to get down from the taxi. The victim was escorted to a different location while the rest of the relatives were threatened with being shot.

At noon on 8 January, some police personnel from police station Pulwama came with the dead body of the victim and told the family they had found the body in Keygam, around four kilometers from Haal.

The wife of the victim refused to take either ex-gratia relief or employment under Statutory Rules and Order No. 43 [SRO 43] on moral grounds; such employment was provided to the nephew of the victim.

Shahmali, the wife of the victim, gave the above statement to the IPTK on 7 April 2015.

On 7 January 1996, the family members of the victim filed a First Information Report [FIR], 7/1996, at the police station in Pulwama under sections 341 [wrongful restraint], 364 [kidnapping or abducting in order to murder] of the Ranbir Penal Code [RPC].

The testimony of the witness clearly indicts the alleged perpetrator for his role in the killing of the victim. Witnesses who were present when the victim was abducted are named as well. Further investigations are therefore warranted. But, the role of the Haal-Gabarpora Camp, Shopian, is unclear but also requires to be investigated. The release of the victim is curiously the same date as the filing of the FIR and it is uncertain whether there is any connection to the two. Further, the testimony of the wife of the victim is silent on who the alleged perpetrator worked for i.e. whether he worked for the Haal-Gabarpora Camp, Shopian, as the Ikhwan were working under the control army camps. This would require to be ascertained.

Case No. 78

Victim Details

Peer Javaid Ahmad [Extra-judicial killing]
Occupation: Affiliated with Jamaat-e-Islami
Son of: Peer Noor-ud-din
Resident of: Noor Mohalla, Khwaja Bagh, Baramulla district

Alleged Perpetrators

1. KV Singh, Major, 29 Rashtriya Rifles [RR], Jetty Camp
2. BS Sambyal, Captain, Adjutant for Officiating Commandant, 29 Rashtriya Rifles [RR], Jetty Camp
3. Rifleman Shiv Sagar, 29 Rashtriya Rifles [RR], Jetty Camp

Case Information

Raids started happening at the home of the victim around two months before his ultimate death. In 1995, the army of Jetty Camp, belonging to 29 RR, started raiding the house, along with the Ikhwan. Major KV Singh was the head of all the raids that happened at the home of the victim. When KV Singh went out on vacation, the command was handed over to Major Saddam [which was an alias]. The victim would not be present at home when KV Singh used to raid and instead his family was harassed. The victim's brother Peer Ghulam Rasool was taken a lot of times, assaulted and tortured and asked about the victim. Saddam also used to raid and twice the victim was handed over for interrogation. He was kept in custody once for two days and the other time for six days.

After sometime, Major KV Singh returned and started his harassment of the family again. In the month of *Ramzan*, on the first day of *Ramzan*, victim was handed over by the local citizen committee [a local committee of Khwaja Bagh] to Major KV Singh for interrogation. On the seventh day of *Ramzan*, his family received the dead body of the victim. The First Information Report [FIR] filed by the police contradicts the true date and cause of death, according to the family.

A day before dead body was received; Major KV Singh had informed the family and asked them to take the victim back. Two brothers of the victim Peer Mohammad Amin and Peer Ghulam Rasool, along with the citizen committee, went to Jetty army camp to take the victim back. Major KV Singh took signatures of the victim's brothers on a document, which were the documents stating the return of the victim to his brothers and home. But then KV Singh told the victim's brothers to come and receive victim next day and kept the document with him.

Master Siraj-ud-din, member of local citizen committee and National Conference, along with Master Abdul Gani Bhat, had friendly relations with the army. When KV Singh said that he would hand over victim the next day, these two persons who were

accompanying victim's brother supported KV Singh, despite the brothers' protests. Peer Ghulam Rasool asked to take back the signed document, but Siraj-uddin scolded him and asked him to do as the Major was saying.

Next day, through the police, they were notified about the victim's death and were asked to take the dead body.

The brother of the victim, Peer Ghulam Rasool, gave the above statement to the IPTK on 11 June 2015.

FIR no.27/1996 under section 302 [murder] of the Ranbir Penal Code [RPC] was filed at the Police Station Baramulla dated 28 January 1996. The incident is placed on 27 January 1996. The FIR was filed by alleged perpetrator no.2 and states that the suspect tried to run after he led them to a place to find weapons. The suspect fell and entered a state of shock and died subsequently. By communication dated 26 December 2013, in response to information sought on all FIRs filed related to custodial killings in Jammu and Kashmir, information was provided that the 29 RR was responsible for the custodial killing of the victim during "questioning". Further, a copy of the FIR was provided. Further information was sought through RTI dated 14 November 2014. A separate RTI was filed regarding all FIRs filed in Jammu and Kashmir against state forces. By communication dated 25 December 2013 from Jammu and Kashmir Police, a copy of the FIR was provided and information that the case was under investigation. By communication dated 6 January 2015 a communication between the Chief Prosecuting Officer and the police of Baramulla is provided that suggests that the file is to be sent for sanction after certain outstanding matters are dealt with. Further, a communication is also provided between the Home Department, Jammu and Kashmir and the Director General of Police. Weaknesses in the putting together of the file, and investigations are pointed out. Finally a police communication is provided which states that the request for sanction, that is being processed, is for three accused persons: alleged perpetrator no.1 named above and another person whose name is illegible and finally Rifleman Shiv Sagar.

On record is a communication dated 28 January 1996 from the Station House Officer [SHO], Baramulla Police Station to the Medical Officer, District Hospital, Baramulla. The same document has a notation regarding the cause of death. This notation is also dated in January 1996 but is unclear.

The witness statement is clear, and cogent evidence is presented of the killing of the victim. Alleged perpetrator 1 is named in the statement while alleged perpetrator 2 has filed the FIR. Alleged perpetrator 3 is included in the police investigations, while alleged perpetrator 2 is excluded by them. What is unclear is

the status of investigations. On one hand the police states that the case is under investigation. On the other they seem to have concluded that this is custodial killing. Lastly, the FIR has a handwritten note on it that states this case was closed against the army and is lying for "central sanction". The more recent communication of 6 January 2015 suggests that the process for sanction is itself delayed at the Jammu and Kashmir level.

Case No. 79

Victim Details

Mohammad Sabir Bhat [Abduction, Extra-judicial killing]

Age: 42

Occupation: Government Teacher [High School, Ganderbal]

Son of: Ghulam Ahmad Bhat

Resident of: Youngura, Ganderbal district

Alleged Perpetrators

1. Bashir Khanday, Government Gunman [Ikhwan]

Case Information

On 31 January 1996, the Indian army along with Ikhwan cordoned the house of Mohammad Sabir. Two army personnel knocked on the door and asked about Mohammad Sabir, who had been sleeping in his room. Upon hearing the voice of army men, the victim came out from his room, upon which the Ikhwan took Sabir out barefooted. The Ikhwan locked up the wife of the victim in the house but she got out of the window and went to search for her husband. Army, along with pro-government militants, headed by Bashir Khanday, took the victim two or three hundred meters towards the Tulmullah and Baroosa road. He was asked to stand in front of the willow of a tree where they shot the victim dead despite the pleas of his wife to let her go. With the help of neighbors and relatives, the dead body of the victim was brought home.

Mohammad Sabir was the father of three daughters and was a government teacher. The dead body of the victim was later buried in the graveyard.

The wife of the victim, Raja Begum, gave the above statement to the IPTK on 29 April 2015.

The witness statement is clear, and cogent evidence is presented of the killing of the victim. This is eye-witness testimony and the allegations warrant further investigation.

Case No. 80Victim Details

Jaleel Andrabi [Abduction, Wrongful Confinement, Torture and Extra-Judicial Killing]

Age: 36

Occupation: Human Rights Lawyer

Spouse: Rifat Andrabi

Resident of: Peer Bagh, Budgam District

Alleged Perpetrators

1. Major Avtar Singh, 103rd Battalion Territorial Army, deployed at Rawalpura, Srinagar
2. Sikandar Ganai, Government Gunman [Ikhwan]

Case Information

On 8 March 1996, Jaleel Andrabi was travelling in a Maruti car along with his wife, Rifat Andrabi. The car was stopped near Parraypora by a military contingent headed by a Major and accompanied by Ikhwan. The victim was abducted.

The victim had been under constant surveillance due to his work as a human rights lawyer. On 29 February 1996, he had taken photographs of Ikhwan and others who were keeping him under surveillance. One of the Ikhwan identified was Sikandar Ganai.

Following his abduction, his family approached the Jammu and Kashmir Police but no action was taken.

On 27 March 1996, the dead body of the victim was recovered from the Jhelum river. The body bore torture marks.

On 9 March 1996, one day after the abduction of the victim, the Jammu and Kashmir Bar Association filed a petition [habeas corpus petition, HCP 32/1996] before the High Court of Jammu and Kashmir.⁶² The army denied the arrest of the victim.

On 14 March 1996, FIR no.139/1996 u/s 364 [Kidnapping/Abducting to murder] and [Kidnapping/Abducting with intent to secretly and wrongfully confine] Ranbir Penal Code, 1989 [RPC] was filed at the Saddar Police Station⁶³. By communication dated 30 November 2013 from the Jammu and Kashmir Police a copy of the chargesheet was provided. By communication dated 22 April 2014 from the Jammu and Kashmir Police a copy of the FIR, and chargesheet was provided.

On 18 March 1996, a Special Investigation Team [SIT] was formed under the orders of the High Court to investigate the case. The High Court sought to

monitor the investigations of the SIT. During the investigations, the dead bodies of Sikandar Ganai and his five associates were recovered. Therefore, crucial evidence in the case was destroyed. The SIT also retrieved the photographs taken by Jaleel Andrabi of persons involved in his surveillance. They were identified as Mohammad Abdul Shah, Nazir Ahmad [Operational names: Khalid, Bachpan] and Mohammad Muzaffar Sheikh.

In August 1996, Mohammad Ashraf Khan [Operational names Umar / Bhai Jan], son of Habibullah Khan, a Government Gunman [Ikhwan] and an associate of Major Avtar Singh, was arrested. He gave a section 164 [Power to record statements and confessions] Criminal Procedure Code, 1989 [CrPC] statement. In this statement it was recorded that in March 1996, Major Avtar Singh and Ikhwan Sikandar Ganai brought a person to the camp. Six other persons were present at this point: Sultan, Balbir Singh, Doctor Vaid, Mushtaq and Hyder. An argument ensued between Major Avtar Singh and the person abducted and he was then beaten and confined in a room. Mohammad Ashraf Khan was informed that the person abducted was Jaleel Andrabi. On the same evening, Mohammad Ashraf Khan heard cried from the room where Jaleel Andrabi was confined. Subsequently, he saw army personnel loading a gunny bag into a truck and leaving the camp. Major Avtar Singh subsequently informed Mohammad Ashraf Khan that he had committed a mistake by killing Jaleel Andrabi.

On 10 April 1997, the High Court was informed that Major Avtar Singh was being considered an accused in the case. Further, that the SIT had tried to apprehend him but had been unable to do so. The Union of India represented that Major Avtar Singh had been removed from service on 7 November 1996. The High Court sought further attempts to apprehend Major Avtar Singh and sought to verify whether he in fact had been removed from service.

On 13 August 2001, the High Court was informed that a chargesheet had been filed against Major Avtar Singh before the trial court. The army had sought before the trial court that the case be referred for an army court-martial. No decision had been taken by the trial court.

On 22 November 2004, the High Court dismissed the petition as proceedings had been initiated for the production of a chargesheet in the case.

On 26 December 2000, a chargesheet was filed in the court of the Chief Judicial Magistrate [CJM], Srinagar against Major Avtar Singh. The family of the victim contended that the chargesheet was incomplete and further persons could be implicated. The CJM court rejected this contention.

62 Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Information was provided.

63 Information on this FIR was sought through RTI on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013.

The Ministry of Defence, in its affidavit before the High Court in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], appears to state in relation to this case that the file had been received in June 2007. But, while the FIR no. is correct, the police station is listed as Baramulla and the victim as Imtiyaz Ahmad Wani. The Government of Jammu and Kashmir, in response to a RTI on sanctions for prosecutions under AFSPA, stated on 6 September 2011, in relation to this case that sanction had been sought on 15 July 2003, but refers to the FIR no. as 29/1997.

Various attempts were made to extradite Major Avtar Singh from Canada, and then the United States, where he had fled after being allowed to acquire a passport. On 9 June 2012, at around 6:30 am California time, Major Avtar Singh called police authorities in the city in which he was residing and informed them that he had killed members of his family and was going to kill himself. Subsequently, the dead bodies of Major Avtar Singh and his family were found by the police authorities at Major Avtar Singh's residence.

The processes of justice, from the delay of granting of sanction for prosecution under AFSPA to the manner in which Major Avtar Singh was allowed to acquire a passport and evade extradition, have assisted in his absolute impunity. With the recent death of Major Avtar Singh, it has been ensured that no justice, by the rule of law, will ever be meted out to him.

The absolute non-seriousness on the part of the State is evident even from the manner in which the sanction for prosecution documents refer to this case. There appears to be no absolute clarity on the status of sanction for this specific case. By allowing Major Avtar Singh to carry out the killing of Jaleel Andrabi and evade justice, other crimes of co-perpetrators and innocent persons, including the recent killing of his own family members, has been facilitated.

The death of Major Avtar, and the brutal killing of his family members, is an indictment of the Indian State. Over sixteen years, Major Avtar Singh has been allowed to leave the country, avoid extradition proceedings and run a business.

The Indian State has effectively allowed for Major Avtar Singh to escape the rule of law, and in the process further innocent lives have been lost. A fair and impartial trial of Major Avtar Singh could have led to the unearthing of the truth behind the various killings, including perhaps the involvement of the highest levels of military/civilian authority.

Case No. 81

Victim Details

Fayaz Ahmad Sofi [Extra-judicial killing]
Age: 17

Occupation: Driver
Son of: Ali Mohammad Sofi
Resident of: Khurhama Tehsil, Ganderbal district

Alleged Perpetrators

1. Raheem Kachur, resident of Khurhama, Ganderbal district, Government Gunman [Ikhwan]

Case Information

At about 9:20 am on 24 March 1996, three Ikhwan entered the house of the victim. Raheem Kachur, resident of Khurhama, Ganderbal, was their head. They were in search of Ghulam Nabi, brother-in-law of the father of the victim. Raheem Kachur told the father of the victim that he would kill Ghulam Nabi. Rahim Kachur went upstairs and fired upon the victim who died on the spot, thinking that he was the son of Ghulam Nabi. The victim's father was an eyewitness to his killing. Raheem Kachur and some other Ikhwan in the army camp stationed at Khurhama, Ganderbal namely Maqbool Gunda and Abdul Majid Sheikh [residents of Wakura] were affiliated with Kuka Parray and Usman Majid. There was a huge protest against the Ikhwan and the army after the killing.

The father of the victim, Ali Mohammad Sofi, gave the above statement to the IPTK on 25 April 2015.

The witness statement is clear, and cogent evidence is presented of the killing of the victim. Ali Mohammad Sofi is an eye-witness and his statement carries great weight. The allegations warrant further investigation particularly on the role played by the army camp and if they took any action following this killing as the person responsible was under their effective control.

Case No. 82

Victim Details

Abdul Hameed Shah [Extra-judicial killing]
Age: 50 years
Occupation: Government Teacher at Government Middle School, Tengpora
Son of: Ghulam Nabi Shah
Resident of: Quil, Bandipora

Alleged Perpetrators

1. Fayaz Ahmad, resident of Malangam, Government Gunman [Ikhwan]
2. Gul Toth, Government Gunman [Ikhwan]

Case Information

On 2 April 1996, at about 4 pm Abdul Hameed Shah was in the garden of his house, when a group of government gunmen headed by Fayaz Ahmad and Gul Toth entered the compound, and began beating him and dragging him out towards the road. The victim

was a government school teacher, and was associated with Jamaat-e-Islami. He had no connections to any militant outfit. The group of Ikhwan involved in his killing were known to be working with the army, 14 Rashtriya Rifles [RR] camp at Manasbal. The victim's wife who was an eye witness to his killing, begged the Ikhwan to release him, but Fayaz Ahmad ignored her, and continued to beat the victim violently. Fayaz Ahmad then physically dragged him out to the gate of the house, and shot him dead there.

A family member of the victim, Ameer Humza Shah gave the above statement to the IPTK on 1 July 2015

The witness statement provides clear evidence of the killing of the victim but the eye-witness statement is important to be recorded. In addition, the role of the 14 RR at Manasbal camp in this killing, even under the international criminal law principles of command responsibility would need to be analyzed and further investigations are warranted.

Case No. 83

Victim Details

Mohammad Maqbool Magray [Abduction, Extra-judicial killing]

Age: 35

Occupation: Government Service [working in Horticulture Department]

Son of: Abdul Khaliq Magray

Resident of: Repora, Lar, Ganderbal district

Ghulam Mohammad Magray [Abduction, Grievous Hurt]

Resident of: Repora, Lar, Ganderbal district

Alleged Perpetrators

1. Rasheed Peer, resident of Dangerpora, Ganderbal, Government Gunman [Ikhwan]

Case Information

On 23 June 1996, two militants Ghulam Hassan Kulo and Ghulam Hassan Magray, son of Ghulam Mohammad Magray, cousin of the victim, were killed at Schpora, Ganderbal. The victim, along with Ghulam Mohammad Rather, a senior villager, came to collect the dead body of said militants.

In the meantime, five persons – government gunmen [Ikhwan] - came into Repora village, near Missia Model High School. They came in a taxi without a number plate. The Ikhwan, headed by Rashid Peer [resident of Dangerpora, Ganderbal], picked up Mohammad Maqbool Magray and Ghulam Mohammad Rather and took them to Manasbal. Rasheed Peer and his associates were working with the Lar Army Camp. They took them near the famous Manasbal Park where they shot dead Mohammad

Maqbool Magray and critically injured Ghulam Mohammad Rather.

Haleema Begum and their family went in search of Mohammad Maqbool at Repora, where they met an eyewitness, a woman of Repora. She told the family that Mohammad Maqbool and Ghulam Mohammad had been picked up by Ikhwan headed by Rasheed Peer, who was known in the area for extortion, loot, murder and creating terror and fear in the area.

The family went in search of Maqbool and found his body near Manasbal Park. Ghulam Mohammad was still breathing, but Maqbool was dead. So the family took Ghulam Mohammad to SKIMS Soura, where he was operated and remained alive. Mohammad Maqbool's body had dozens of bullets pumped into it.

A thousand people protested against the custodial killing of Maqbool the whole night, when the deceased was kept in his home. His relatives came the next day and buried him in a local graveyard.

The sister of the victim, Haleema Begum gave the above statement to the IPTK on 6 May 2015.

The witness statement is clear, and cogent evidence is presented of the actions of the alleged perpetrator. The allegations warrant further investigation. There also seem to be many witnesses to this incident who statements may be recorded.

Case No. 84

Victim Details

Shakeel Ahmed Wani [Abduction and Torture]

Son of: Ghulam Mohammad Wani

Resident of: Lolipura, Pattan, Baramulla District

Ghulam Mohammad Wani [Abduction and Extra-Judicial Killing]

Age: 45

Occupation: Fruit Business [mainly apples]

Son of: Ghulam Mohiuddin Wani

Resident of: Lolipura, Pattan, Baramulla District

Alleged Perpetrators

1. Major Rampal [Code Name], 22 Rashtriya Rifles [RR], Hamray army Camp
2. Shera, resident of Shilwat, Government Gunman
3. Noor Mohammed Pandit, resident of Hamray, Government Gunman
4. Mushtaq Ahmed Pir, resident of Andergam, Government Gunman

Case Information

Since 1995, the Indian forces started targeting all those who were of a good character in the village.

Ghulam Mohammed Wani also possessed a good character – he was “*deendar*”, helped in the mosque, read the Namaz, did good business, helped young children etc. He was affiliated to the Jamaat-e-Islami. Many government gunmen, who were locals, would come to the victim's house. They were people like: Ali Mohammed Bengali [resident of Gohal Tang Pura], Noor Mohammed Pandit [resident of Hamray], Abdul Rashid Mir [resident of Andergam] and Mushtaq Ahmad Pir resident of Andergam.

They would take him away [not to any camp] but outside the house. They would keep him under constant surveillance. They demanded money too. The interviewee believes that his father [victim] did pay them 1-2 times. This continued till July 1996, when he was killed.

In 1994, the victim was giving a sermon in the mosque and reading the Namaz. But the Army from Hamray Camp came in two vehicles, along with one government gunman [who was a resident of Naidkhai]. They took him to the Hamray army camp and kept him there for a day. He was tortured there [interviewee does not remember names of any officers], forced to drink water infused with chillies, beaten up badly, stripped and an iron roller made to go over his entire body. He came back home the next day. Locals in the village saw him being picked up and went outside the Camp and started protesting. Consequently, he was released the same day at night. The same locals earlier informed the family. The family believes he was targeted because he was affiliated to the Jamaat-e-Islami.

In 1995 [interviewee does not remember which month], Ali Mohammed Bengali picked him up. He was taken from the village in front of other villagers, who came and informed the family. The gunman took him to Naidkhai, Bandipora district. There he was kept in different houses. During this shifting between houses, relatives of the family saw him and they forced the gunman to release him. He returned the same night. He was not tortured.

Sometime in 1995 [interviewee does not remember which month, as he was quite young], he went to Delhi for business. In the meanwhile, 22RR from the Hamray Army Camp came for a crackdown in the village. They picked up the interviewee and his younger brother, Muzaffar Wani. They took them to a house where they beat up Muzaffar. They hit the interviewee, forced him to drink water infused with chillies, rolled a wooden roller all over his body. The person who picked them up was popularly called Major Rampal [interviewee does not know his real name]. A gunman, Shera, resident of Shilwat, accompanied him. They were kept in the house for 4-5 hours and then released.

After this incident, the family members were not harassed. Relatives and neighbors asked the victim to move out because of the danger to his life but he

refused to do so. The government gunmen were actually looking for an opportunity to kill him, however, they had been unable to do so because every time they had picked him up it was in the presence of some other people.

On 10 July 1996, when it was time to pluck the apples from trees, the victim went to the orchard. From there he was going to Tapar village, to his maternal uncle's house, where he had been staying so that gunmen wouldn't come to his house at night. On his way, however, in Gondbal village, the gunmen picked him up. They were Noor Mohammed Pandit and Mushtaq Ahmed Pir. They took him to Gulabwari in a car. There they kept him in a house, where he was given food and he read the Namaz [the interviewee found this out through a laborer, Ghulam Mohammed Dar, who worked there but also knew him].

At 10 pm, they took him to a place that had wildlife and water bodies, close to Wular Lake. They then sat him down in a boat. They shot him and threw his body in the water.

The family had been looking for him everywhere. They went to the gunman Ali Mohammed Bengali but he denied having any knowledge about the victim. Another person there, however, gave the family a hint and asked them to look in the area around the site of the incident. Then the maternal uncle found his dead body in the water in Bathipora. They got the body back and lodged an FIR the next day.

During the funeral procession two gunmen barged in with guns and said that they wouldn't let his body be buried. They made people run away. They also did not allow those who came to pay condolences from outside the village to enter the village.

After the death, the family had no interaction with the army or their gunmen. Nobody bothered them. They received compensation of Rs. 1 lakh and an SRO 43 appointment.

The son of the victim, Shakeel Ahmed Wani, gave the above statement to the IPTK on 7 July 2015.

The witness statement is clear, and cogent evidence is presented of two incidents: torture and killing. The torture of the victim by alleged perpetrators no.1 and 2 is clearly detailed. The killing of the father of the witness requires further investigation particularly the involvement of other government gunmen [who were harassing the victim from before]. Further, the evidence surrounding the actual killing needs to be collected as the information in the present witness statement is hearsay.

Case No. 85Victim Details

Ashiq Hussain Mir [Abduction and Extra-Judicial Killing]

Son of: Haji Ghulam Ahmad Mir

Resident of: Mohalla Khaja Sahib, Baramulla

Alleged Perpetrators

1. Sanjay Sharma, 141st Battalion Border Security Force [BSF]
2. Inspector J.S.Bhan, 141st Battalion Border Security Force [BSF]
3. Sub-Inspector [SI] Toran Biswas, 141st Battalion Border Security Force [BSF]
4. Lance Naik [Lance Corporal] K.P.Gopa, 141st Battalion Border Security Force [BSF]

Case Information

On 19 August 1996, Ashiq Hussain Mir was picked up and his dead body was later recovered from the river Jhelum.

First Information Report [FIR] no.227/1996 u/s 302 [Murder], 54 Ranbir Penal Code, 1989 [RPC] was filed at the Baramulla Police Station. Another FIR was filed by the BSF, FIR no. 218/1997 at the Baramulla Police Station⁶⁴. By communication dated 22 April 2014 from the Jammu and Kashmir Police a copy of FIR no. 218/1997 and related investigation documents were provided. There is a notation on the FIR copy that this FIR was closed as “untraced” on 21 August 1998. But, the communication dated 1 October 1999 referred to below suggests that this FIR was closed as not admitted. By communication dated 6 January 2015 information was provided that the case was in fact closed as untraced but the final report had not been submitted. By communication dated 25 December 2013 from Jammu and Kashmir Police a copy of the FIR no. 227/1996 and chargesheet was provided along with information that the case was chargesheeted on 20 December 2003. By communication dated 6 January 2015 information was provided that documents related to sanction for prosecution were not available with the police station.

The family of Ashiq Hussain Mir filed a petition before the High Court of Jammu and Kashmir [HCP 673/1996]⁶⁵.

Sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] for the alleged perpetrators was sought on investigations in FIR no. 227/1996 on 1 October 1999

by the Jammu and Kashmir Home Department from the Ministry of Home Affairs. A response was provided [the date is unclear] wherein it was stated that as soon as the chargesheet is filed, the BSF would request the case be tried by the General Security Force Court.

The Ministry of Home Affairs provides no explanation for why sanction prosecution was effectively declined. While the BSF could try the alleged perpetrators by the General Security Force Court, it was incumbent on the Ministry of Home Affairs to provide a reasoned decision in response to a request for sanction for prosecution under AFSPA.

Further, the IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir. No information was provided. The IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

Therefore, it would appear that in addition to not allowing the criminal court to try the alleged perpetrators, no Court-Martial may have been conducted by the BSF. Therefore, this would appear to be a case of absolute impunity for the alleged perpetrators.

Case No. 86Victim Details

Ghulam Mohammad Tantray [Extra-judicial killing]
Resident of: Tantray Mohalla, Palhallan, Pattan, District Baramulla

Ghulam Nabi Tantray [Torture]
Son of: Ghulam Mohammad Tantray
Occupation: Government Servant
Resident of: Tantray Mohalla, Palhallan, Pattan, District Baramulla

Alleged Perpetrators

1. Major SS Sinha alias Liaqat Ali Khan, Palhalan army Camp
2. Mohammad Shaban Tantray alias Shaban Kawa, Government Gunman
3. Mohammed Ismail Kawa, Government Gunman
4. Ghulam Nabi Kawa, Government Gunman
5. Lateef Ahmad, Government Gunman
6. Abdul Jabbar Ganai, Government Gunman
7. Abdul Rashid Ganai, Government Gunman
8. Abdullah Yatoo, Government Gunman

⁶⁴ Information on the FIR's was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013 on both FIRs. Further information sought through RTI dated 14 November 2014.

⁶⁵ Information on the petition number was sought through RTI on 16 February 2012. No information was provided. Information on this petition was sought again on 4 April 2014.

Case Information

Ghulam Mohammad Tantray [Gul Jamaati] was a member of Jamaat-e-Islami. Prior to 1990, officers from Pattan police station were after him. As a result, he migrated to his relatives' house. In 1990, the army arrested him in Kupwara. He was then kept in Hiranagar jail for about two years. The family found out about the arrest only one month later, when news of his arrest was released in the press. During that period, the family had started believing that he must have gone across the border to Pakistan.

In 1996, the army of Palhallan picked Ghulam Nabi and took him to the Palhallan army Camp at 8:30 pm. He was tortured there, hung upside down for about four hours and stripped. On the next night, he was stripped again, electric wires were connected to his toes and around his neck, and then water was thrown at him and he was given continuous electric shocks. Major Sinha led the entire torture procedure.

Some days later, at about 3:00 pm on 12 October 1996, government gunmen sent a civilian person, namely Ghulam Mohammed Sheikh to call Ghulam Mohammad Tantray on their behalf. These gunmen were as named above i.e. alleged perpetrators 2-8. Ghulam Mohammad Tantray went to the shop where they had called him [which belonged to Abdul Gafoor Wani, resident of Raipora, Palhallan] but he saw that nobody was there, so he came back home. He had tea and narrated the incident to his son. At about 6:00 pm, he went to the Masjid for prayers. On his way, the abovementioned gunmen abducted him. His cousin sister witnessed the abduction and informed the family about it. At about 8:00 pm, the family heard some gunshots. The next morning, Mohammed Maqbool Bhat informed the family that Ghulam Mohammed Tantray's dead body had been found at Raipora, Palhallan.

The police filed a First Information Report [FIR] and the dead body was handed over to the family for last rites. The gunmen continued to raid their house a few times after this incident.

Ghulam Nabi Tantray gave the above statement to the IPTK on 5 July 2015.

The victim's statement is clear, and cogent evidence is presented of his own torture and the killing of his father. The allegations warrant further investigation.

Case No. 87Victim Details

Abdul Aziz Bhat [Torture, Abduction and Extra-Judicial Killing]

Son of: Ali Mohammad Bhat

Resident of: Pahloo Brain, Nishat, Srinagar

Alleged Perpetrators

1. Brigadier Surjit Singh, 167th Field Regiment, Army, Harwan
2. Major H.P. Singh, 167th Field Regiment, Army, Harwan

Case Information

On the intervening night of 26 and 27 December 1996, Abdul Aziz Bhat was tortured in his residence, and then abducted by personnel of the Gardwal Regiment [but in a written application filed by the wife of the victim, reference is made to the 167th Infantry Battalion as being culpable for the abduction and killing of her husband]. During the torture of Abdul Aziz Bhat at his residence, his wife was locked in another room with her minor child. The wife of the victim was unable to raise any alarm. The dead body of Abdul Aziz Bhat was received on the following day.

First Information Report [FIR] no.140/1996⁶⁶ u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 3 [Licence for acquisition and possession of fire arms/ammunition]/25 [Punishment for certain offences] Arms Act, 1959 was filed at the Nishat Police Station on a written complaint of one Lieutenant Anil Verma, Adjutant, 167th Field Regiment, Army to the effect that Major H.P. Singh along with troops of the said unit conducted a operation at Pahloo area on 26 December 1996 at 11:30 pm. During the search one person namely Abdul Aziz Bhat was interrogated on the spot. Further, it was alleged that Abdul Aziz Bhat had agreed to make a disclosure of a hideout and during this he took a rifle and started firing following which he was shot dead. The 7 August 2012 communication from the Jammu and Kashmir Police states that this case was closed by declaring the perpetrators as untraced but a final report was not submitted. An investigation document states that there was no cooperation from the 167th Field Regiment. Further, the arms impounded by the army were never handed over to the Jammu and Kashmir Police investigations. By communication dated 30 November 2013 from the Jammu and Kashmir Police a copy of the closure report was provided.

FIR No.8/1997 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] 67 was filed at the Nishat Police Station on the written application of the wife of Abdul Aziz Bhat and on the orders of the Chief Judicial Magistrate [CJM], Srinagar.

66 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. By communication dated 7 August 2012 from the Jammu and Kashmir Police, a copy of the FIR and other documents related to the investigation were provided. Further information sought through RTI on 15 October 2013.

67 Information on this FIR was sought through RTI on 2 July 2012. By communication dated 7 August 2012 from the Jammu and Kashmir Police, a copy of the FIR and other investigation documents were provided. Further information sought through RTI on 15 October 2013.

The application sought that a proper murder case be registered against Major H.P.Singh, Company Commander, 167th Infantry Battalion and against the Commanding Officer of same Battalion, Brigadier Surjit Singh, as they had killed Abdul Aziz Bhat by severe torture in custody as he was arrested by them. The 7 August 2012 communication from the Jammu and Kashmir Police states that this case was closed as not admitted but a final report was not submitted. By communication dated 30 November 2013 from the Jammu and Kashmir Police a copy of the closure report was provided.

The family of the victim approached the State Human Rights Commission [SHRC] on 14 July 1998 and a final decision was delivered on 17 June 2008 and Rs.2,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders] were recommended.

The SHRC arrived at its decision by considering reports from the police and testimony of witnesses.

The SHRC received the report from Crime Branch Headquarters, Srinagar dated 21 December 2002 which provided basic information on FIR no.140/1996 and the written complaint made by the wife of Abdul Aziz Bhat. Further, a reference is made by the SHRC to submissions by the Crime Branch and the police [it is unclear whether these submissions were a part of the 21 December 2002 letter] that supported the version of events that Abdul Aziz Bhat started firing while taking the armed forces to a hideout.

The testimony of witnesses Ghulam Ahmad Bhat and Mohammad Ramzan Bhat were also considered by the SHRC. The witnesses deposed that Abdul Aziz Bhat was picked up during the night on 26 and 27 December 1996 and was tortured to death in custody following which his dead body was given to them through the Nishat Police Station. The witnesses have stated that during the period the people remained indoors and would not come out during night or in late hours because of a perception of threat.

The report of the Additional Director General of Police [ADGP] dated 18 September 1998 submitted before the SHRC considered the contents of FIR 140/1996 and concluded that the proper procedures before the disclosure were not followed and stated that the FIR was an attempt to cover up the custodial killing.

Based on the above, the SHRC found that the case in favour of the family of Abdul Aziz Bhat was made out. Further that the other version of events was “highly unrealistic and devoid of logic”. As the wife of Abdul Aziz Bhat had made a clear statement and the ADGP also concluded that this was a case of custodial killing, the SHRC indictment appears sound. But, it must be mentioned that the testimony of the witnesses

Ghulam Ahmad Bhat and Mohammad Ramzan Bhat do not provide much detail to the incident. Particularly, it is unclear on what basis they testified to the abduction.

No information exists on what basis the Jammu and Kashmir Police closed the investigations in this case or on what basis the case was held to be not admitted. The final reports would, by law, have to be judicially scrutinized and this was not done in this case.

Further, the Jammu and Kashmir Police is also indicted by the fact that they only filed a FIR with the victim family's version of events after the intervention of a court.

The Ministry of Defence seems to have cared very little about the SHRC order, Jammu and Kashmir Police investigations or in instituting a process for delivering justice.

The available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 88

Victim Details

1. Sikandar Ganai [Extra-Judicial Killing]
2. Mohammad Ramzan [Extra-Judicial Killing]
Occupation: Employee, Stone crusher, Humhama
Son of: N.K [full name unavailable]
Resident of: Bangal
3. Mushtaq Ahmad Hajam [Extra-Judicial Killing]
Son of: Mohammad Subhan Hajam,
Resident of: Sumbal, Sonawari, Bandipora District
4. Mohammad Assan Lone [Extra-Judicial Killing]
Son of: Ghulam Qadir Lone
Resident of: Chewrajpora, Pulwama District
5. Mohammad Afzal Malik [Extra-Judicial Killing]
Son of: Ghulam Mohiuddin/Mohammad Malik
Resident of: Budgam

Alleged Perpetrators

1. Major Avtar Singh, 103rd Battalion Territorial Army
2. Havaladar Balbir Singh, 103rd Battalion Territorial Army
3. Dr. Sumon Singh, 103rd Battalion Territorial Army

Case Information

First Information Report [FIR] no.29/1997 u/s 302 [Murder], 34 [Common intention] Ranbir Penal Code, 1989 [RPC] was filed at the Saddar Police Station⁶⁸.

By communication dated 21 December 2011 from the Jammu and Kashmir Police information was provided that a case was registered on 20 January 1997 that five persons were apprehended and later on their dead bodies were recovered from Pampore. Prima facie offences were established during investigation against Major Avtar Singh.

The casefile was submitted to the Jammu and Kashmir Home Department to seek sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA].

By further communication dated 9 July 2012 from the Jammu and Kashmir Police, information was provided in the form of a letter dated 15 June 2012 from the Deputy Superintendent of Police [DSP], Headquarters, Srinagar that sanction for prosecution under AFSPA was still awaited in the case. By communication dated 30 November 2013 from the Jammu and Kashmir Police it was stated that sanction for prosecution was yet to be received. By communication dated 22 April 2014 from the Jammu and Kashmir Police information was provided that the case was under investigation as the case had been submitted for accord of sanction, which was awaited. Further, communication dated 3 July 2004 from Sub-Divisional Police Officer [SDPO], Saddar, to Superintendent of Police, City South, Srinagar, was provided. This communication essentially corrects certain issues in the investigation and the English translated site plan and seizure memo's are enclosed. The communication seeks that sanction for prosecution be procured.

As per a letter dated 23 October 2000 from the Senior Superintendent of Police [SSP], Srinagar to the Deputy Superintendent of Police [DSP], and a member of the Special Investigating Team, the case stands registered against Major Avtar Singh and "two other Army personnel".

The case was chargesheeted and sanction for prosecution under AFSPA was sought on 13 October 1998 and was still awaited.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that it was not received.

The Government of Jammu and Kashmir, in response to a RTI on sanctions for prosecution under AFSPA, stated on 6 September 2011 in relation to this FIR number that sanction was awaited for the prosecution of the alleged perpetrators. But, the case details refer

to this as being related to the killing of "Jalil Ahmad Indrabi".

Various attempts were made to extradite Major Avtar Singh from Canada, and then the United States, where he had fled after being allowed to acquire a passport.

On 9 June 2012, at around 6:30 am California time, Major Avtar Singh called police authorities in the city in which he was residing and informed them that he had killed members of his family and was going to kill himself.

Subsequently, the dead bodies of Major Avtar Singh and his family were found by the police authorities at Major Avtar Singh's residence.

In addition to the discrepancies in the Government of Jammu and Kashmir document of 6 September 2011, it is noteworthy that Ministry of Defence has delayed taking a decision on whether to grant sanction for prosecution. This has allowed the alleged perpetrators to evade justice.

It needs to be ascertained whether the Jammu and Kashmir Government has at all sent the case for sanction for prosecution to the Ministry of Defence and whether the Ministry of Defence has misplaced the case file.

At least after the 2009 affidavit by the Ministry of Defence, the Jammu and Kashmir Government should have considered even re-sending the case or clarifying when and how the case was sent.

In any case, after providing this information before the High Court of Jammu and Kashmir in 2009 and also in 1997 after the case was filed against the personnel of the army the Ministry of Defence seems to have cared very little about the Jammu and Kashmir Police investigations or in instituting a process for delivering justice.

The available documents do not suggest that even a Court-Martial was conducted in this case by the army.

With the recent death of Major Avtar Singh, it has been ensured that no justice, by the rule of law, will ever be meted out to him. The processes of justice have therefore ensured impunity.

Case No. 89

Victim Details

Abdul Khaliq Wani [Extra-Judicial Killing]
Son of: Habibullah Wani
Resident of: Tulmullah, Ganderbal District

⁶⁸ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014. A copy of the FIR has been received to date.

Alleged Perpetrators

1. Major Y. Mohan Yadav⁶⁹, 13 Rashtriya Rifles [RR] / 3 Kumaon Regiment, Army

Case Information

Abdul Khaliq Wani was picked up by army personnel on 16 February 1997 for questioning during which he received injuries and later died in the hospital on the same day.

The family of the victim gave a statement to the IPTK on 29 April 2015 and confirmed the involvement of the alleged perpetrator in the killing of the victim.

First Information Report [FIR] no.39/1997 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Ganderbal Police Station⁷⁰. The communication dated 9 May 2012 by the Jammu and Kashmir Police reveals that on 16 February 1997 army personnel of 3 Kumaon cordoned off the Tulmullah village and started a door-to-door search.

During the search operation some locals were lifted for questioning / interrogation. During this process Abdul Khaliq Wani got injured and was shifted to Sher-e-Kashmir Institute of Medical Sciences [SKIMS], Soura, Srinagar for treatment where he succumbed to injuries. Accordingly, proceedings under Section 174 [Police to enquire and report on suicides etc.] Criminal Procedure Code, 1989 (CrPC) were initiated.

The 18 February 1997 medical opinion opined the cause of the death to be due to head injury. On receipt of the medical opinion, FIR no. 39/1997 was registered and investigation was taken up. During the course of investigation all legal procedural formalities were conducted and case was established against the alleged perpetrator. The case diary file was submitted to the Deputy Inspector General, Central Kashmir Range, Srinagar vide District Police Office Ganderbal's letter no.CRB/Sanc/12017-18 dated 9 October 2011 for further submission for acquiring sanction for prosecution under AFSPA against Major Joginder. Accord of sanction was still awaited. By further communication dated 9 July 2012 from the Jammu and Kashmir Police it was stated that the case was lying with the "home deptt." But, by communication dated 2 May 2014 from the Jammu and Kashmir Police, certain documents were provided. Denial of sanction communication dated 25 February 2011 was provided. Further, the request for sanction from the Government of Jammu and Kashmir dated 11 September 2006 was also provided. Further, certain other case related

documents were also provided. The denial of sanction communication states that: "From the facts of the case as per documents available, it is revealed that the allegations made against Major Y. Mohan Yadav of 13 Rashtriya Rifles are totally false and devoid of any substance. All the witnesses have clearly stated that Shri Abdul Khaliq Wani started running towards a Nala and fell and the security forces did not ill treat anyone during the entire operation. Shri Abdul Khaliq Wani was absolutely all right and moved back to his house when the security forces had left". An interesting feature of this communication signed and sent by "S. Ashraf", Under Secretary to the Government of India, is that the last para of the communication states that sanction is declined as against "Major Sumit Rastogi of 42 Rashtriya Rifles Battalion". The denial of sanction in the case relating to Major Sumit Rastogi [also included in this report] was issued in 1990 and signed and sent by S. Ashraf. Therefore, clearly, S. Ashraf merely used the same template, but omitted to amend the last para, when declining sanction in this case. This displays the non-application of mind inherent in the sanction for prosecution process.

Further, a report of the investigations was provided that confirms the above details and notes that Abdul Khaliq Wani received head injuries.

By communication dated 18 December 2014 from the Jammu and Kashmir Police information was provided that sanction had been declined but that the case was still "under investigation".

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that the case had been received in December 2006 and was under consideration.

This case does not find mention in the list of cases furnished by the Government of Jammu and Kashmir in response to a RTI on sanctions for prosecutions under AFSPA on 6 September 2011. Also, the communication of the Jammu and Kashmir Police of 9 May 2012 states that this case was sent to the Deputy Inspector General, Central Kashmir Range, Srinagar on 9 October 2011 for seeking sanction for prosecution under AFSPA. But, this contradicts the fact that sanction was sought on 11 September 2006.

Further, by letter dated 9 July 2012 information was provided that the case was still with the Home Department. But, surprisingly, the Ministry of Defence seems to have received the case in December 2006. Communication dated 2 December 2013 from the Jammu and Kashmir Police states that sanction for

69 The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], spells the last name of the alleged perpetrator as "Yadoo". Certain other formulations also exist on record, including the first name as Joginder. The name as per the decline of sanction document is being used.

70 Information on this FIR was sought through RTI on 7 October 2011. By communication dated 9 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

prosecution was declined by “the Home Department vide letter No. Home/Pross/2001/501 dated 24-11-2010 and letter from Govt of India Ministry of Defence No. 6(12)2006 D(AG) dated 25/2/2011 and letter dated 18-12-2012”.

Based on the information provided by the Jammu and Kashmir Police, it needs to be investigated why the Government of Jammu and Kashmir and the police took so many years to process the case for sanction for prosecution under AFSPA. Further, following denial of sanction, it is unclear what the present status of the case is as far as the Jammu and Kashmir Police are concerned. Most importantly, the reason for the denial of sanction contradicts the position of the family and the police. It needs to be ascertained what the Ministry of Defence is referring to when it states that “all the witnesses have clearly stated” that the victim fell into a “nala”. Finally, despite sanction having been declined in 2011, the Jammu and Kashmir Police is yet to file a final report and has stated that the case is still “under investigation”.

Case No. 90

Victim Details

Ghulam Nabi Malik [Abduction and Extra-Judicial Killing]

Age: 38

Occupation: Shopkeeper

Son of: Abdul Ahad Malik

Resident of: Shahpora, Ganderbal District

Alleged Perpetrators

1. Major Parera, 3Kumaon Rifles, Army
2. Irshad Ahmad Sofi, Civilian
3. Mohammad Yaseen Sofi, Civilian
4. Constable Abdul Rashid Sofi, Acting Munshi, Ganderbal Police Station, Jammu and Kashmir Police
5. Mohammad Sultan Mir [Operational name: Sula Buchpuri], Government Gunman [Ikhwan]
6. Khati, spouse of Mohammad Yaseen Sofi, Civilian

Case Information

On 19 June 1997 the family states that there was a fight between the families of Ghulam Nabi Malik and Mohammad Yaseen Sofi. His brother, Abdul Rashid Sofi, was acting Munshi in the Ganderbal Police Station. The family states that Mohammad Yaseen Sofi threatened Ghulam Nabi Malik victim that he would get him killed.

On the same evening at about 10.30 pm, the family of Ghulam Nabi Malik states that the army and police raided the house and ransacked the house and

damaged Ghulam Nabi Malik's shop.

On 21 June 1997, some gunmen in police and army uniform barged into Ghulam Nabi Malik's house. Once the gunmen entered the house, they were identified by the members of the family since they lived close to their house. They were identified as Abdul Rashid Sofi, Irshad Ahmed Sofi, Mohammad Yaseen Sofi and Khati. The army was also present with the police, according to the family members of Ghulam Nabi Malik. Ghulam Nabi Malik was then taken away along with his money, Rs. 65,000. The reason for the abduction was that Irshad Ahmed Sofi, Mohammad Yaseen Sofi and Khati had purchased items from the shop of the victim to the tune of Rs.30,000 and refused to pay. The family of the victim also implicates Mohammad Sultan Mir in the abduction.

On the next day, 22 June 1997, the family went to Ganderbal Police Station and the army camp of 3 Kumaon situated near the police station. The camp was headed by Major Parera. The family states that they also went to Special Operations Group [SOG] of the Jammu and Kashmir Police camp located at the power-house but none of these agencies acknowledged his arrest.

The family states that they had identified the alleged perpetrators in the case but despite their repeated attempts the police did not cooperate. The police did not file any FIR and did not take any action.

The family kept searching for Ghulam Nabi Malik for about two months. The family states that they were given a clue by the SOG personnel to check the water canal, above the police station in Tengpora village. The family of Ghulam Nabi Malik requested the ex-engineer of the power plant to stop the water flow in the canal so that they could see the dead body but he initially refused. On 16 August 1997 there was a mechanical fault in the pump and the water stopped and soon the family started to search the canal and after this search they found the body of Ghulam Nabi Malik. The dead body was lying under the water but once the family took the body out, they called police to the spot. The family then states that they took pictures of the body and the body did not bear any bullet injuries but the body bore torture marks. The family states that the face had been burnt, legs bore cut marks by a knife and various other marks were on the body. The family later took the body to the Ganderbal Hospital where an autopsy was conducted.

The family of Ghulam Nabi Malik received Rs.1,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders].

The family of Ghulam Nabi Malik gave a statement to the IPTK on 22 February 2012.

First Information Report [FIR] no.173/1997 u/s 302 [Murder], 364 [Kidnapping/Abducting to murder], 109 [Abetment] was filed at the Ganderbal Police Station⁷¹. By communication dated 18 December 2014 from the Jammu and Kashmir Police information was provided that a chargesheet, prepared by Crime Branch, had been filed before the City Magistrate, Srinagar on 27 October 2003. A copy of the chargesheet was provided.

The family of Ghulam Nabi Malik filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 1157/1997]⁷². It was also alleged before the High Court that Showkat Hussain, at one point the Station House Officer [SHO], Ganderbal Police Station, was screening the alleged perpetrators as he was related to them. During the proceedings the court was informed that SHO Showkat Hussain was replaced in the investigations of the case.

On 14 October 1998 the High Court disposed off the petition, directed that investigations be expedited, and stated that there was no further reason to be seized of the petition as SHO Showkat Hussain had been replaced in the investigative team.

The matter was also litigated before the High Court by the alleged perpetrators [Cr.Rev.No. 48/2004, Bail Appl no. 48/2005 and Petition no. 36/2004 filed under Section 561-A. A Final decision was delivered on 25.5.2007]⁷³. The facts recounted by the High Court in this decision state that Khati was also implicated in the abduction of Ghulam Nabi Malik. Further, that Mohammad Sultan Mir took Rs. 10,000 for the release of Ghulam Nabi Malik but did not act on his promise to assist.

The decision also states that the Crime Branch investigations concluded that the abduction had been carried out and also implicated Major Parera, 3 Kumaon Rifles. Major Parera was said to have assisted in the crime on the promise of receiving a Pashmina shawl worth Rs. 60,000. A charge sheet was lodged before the City Magistrate, Srinagar, on 27 October 2003 against: Major Parera, Mohammad Sultan Mir, Mohammad Yaseen Sofi, Irshad Ahmad Sofi and Abdul Rashid Sofi. By the decision of the High Court, Mohammad Yaseen Sofi and Irshad Ahmad Sofi were granted interim bail.

The record suggests that Major Parera challenged this order in the Supreme Court [his petition related to quashing of a FIR and an order of the lower court].

The Supreme Court on 11 July 2007 stayed the proceedings with regard to the accused Major Parera.

On 28 July 2009 the High Court granted interim bail to Abdul Rashid Sofi.

The family of the Ghulam Nabi Malik approached the National Human Rights Commission [NHRC] on 1 March 1999.

The role of the Jammu and Kashmir Police may be criticized in this case as it appears that a FIR was filed only after the killing of the victim.

Further, while it appears judicial proceedings are under way, the army appears to care very little for the possibility that one of its personnel may be involved in the commission of a crime as the available documents do not suggest that even a Court-Martial was conducted in this case by the army against Major Parera.

Case No. 91

Victim Details

Sharief-ud-Din Khan [Abduction, Extra-judicial killing]
Age: 20 years
Son of: Ghulam Mohammad Khan
Resident of: Darzi Mohalla, Asham, Bandipora.

Fatima Begum [Extra-judicial killing]
Wife of: Ghulam Mohammad Ganai,
Resident of: Nabdi Mohalla, Safapora, Bandipora

Alleged Perpetrators

1. Fayaz Ahmad Mir alias Fayaz Nabdi, Government Gunman [Ikhwan]
2. Ayoub Khan alias Ayoub Nabdi, Government Gunman [Ikhwan]
3. Manzoor Ahmad Mir, Government Gunman [Ikhwan]
4. Mohammad Shafi Lone, Government Gunman [Ikhwan]
5. Shabir Ahmad Bhat, Government Gunman [Ikhwan]

Case Information

Sharief-ud-Din was studying for a diploma in civil engineering at KITE Polytechnic College. On 13 July 1997, he was at his home spending summer vacations, when he was arrested by a group of local Ikhwan, namely Fayaz Ahmad Mir [alias Fayaz

71 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. RTI was filed on 18 December 2012 to Jammu and Kashmir Police regarding custodial killings in Jammu and Kashmir between 1989 and 2012. By communication dated 4 January 2013 information was provided that the case had been chargesheeted. Further information sought through RTI on 15 October 2013. By communication dated 2 May 2014 from the Jammu and Kashmir a copy of the FIR was provided and information that the case had been chargesheeted by the Crime Branch, Kashmir and produced on 27 October 2003. Further information sought through RTI dated 14 November 2014.

72 Information on the petition number was sought through RTI on 2 July 2012. Information was provided.

73 Information on the petition numbers was sought through RTI on 16 February 2012. Information was provided.

Nabdi], Ayoub Nabdi [both residents of Nabdi Mohalla, Safapora], Manzoor Ahmad Mir, Mohammad Shafi Lone and Shabir Ahmad Bhat [currently working with Territorial Army]. Fayaz Nabdi was the head of the Ikhwan group from Safapora and had connections with Major Sinha of 13 Rashtriya Rifles [RR] Manasbal Camp. They took the victim to the house of Fayaz Nabdi where he was tortured badly. The Ikhwans made him stand against a wall and shot at his chest. He was then ordered to run. He fell down after stumbling for a short distance, and Fatima Begum wife of Ghulam Mohammad Ganai resident of Nabdi Mohalla, who was a witness to the whole torture tried to save him. But she too was fired at by the Ikhwans. Both the victims were then left to bleed to death on the spot. Sharief-ud-Din was buried in martyr's grave yard at Asham, Bandipora.

The uncle of victim no.1, Nazir Ahmad Khan gave the above statement to IPTK on 15 July 2015

The witness statement provides evidence of the killing of the two victims though it is unclear whether this is eye-witness testimony. In addition, the role of the 13 RR at Manasbal camp in this killing, even under the international criminal law principles of command responsibility would need to be analyzed and further investigations are warranted.

Case No. 92

Victim Details

Three civilians [Extra-Judicial Killing (Fake encounter)]

Alleged Perpetrators

1. Major Ganpati, 28 Rashtriya Rifles [RR], Army

Case Information

The victims were killed on 16 July 1997 in an alleged fake encounter.

First Information Report no.80/1997 was filed⁷⁴. The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was received in September 2008 and was under consideration.

The Ministry of Defence, in response to a RTI on 10 January 2012 on sanctions for prosecution under AFSPA, stated in relation to this case that sanction had been denied on 23 September 2010. Further, that: "there is a contradiction in the investigation carried out in the case by the police twice with a gap of 8-9 years."

The Ministry of Defence while declining sanction did

not provide the details of the contradictions in the police investigations. Further, it is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir 11 years to investigate and process the case for acquiring sanction for prosecution under AFSPA, which apparently helped the perpetrators in evading justice.

Case No. 93

[Massacre/Extra-judicial killing]

Victim Details

Hajra

Wife of: Ghulam Qadir Dar

Abdul Salam Dar

Son of: Ghulam Qadir Dar

Jawa

Daughter of: Ghulam Qadir Dar

Abdul Rashid Dar

Nephew of: Ghulam Qadir

Saif-ud-din

Son of: Habibullah Dar

Ghulam Rasool Dar

Son of: Ghulam Mohammad Dar

Ghulam Nabi Dar

Son of: Abdul Samad Dar

All were residents of Saderkoot-Bala

Alleged Perpetrators

1. Abdul Rashid Parray alias Rashid Billa, Government Gunman [Ikhwan]
2. Mohammad Ayoob Dar, Government Gunman [Ikhwan]
3. Wali Mohammad Mir, Government Gunman [Ikhwan]
4. Nazir Ahmad Wani, Government Gunman [Ikhwan]
5. Bashir Ahmad Pehlu, Government Gunman [Ikhwan]
6. Nazir Ahmad Parray alias Fauji, Government Gunman [Ikhwan]
7. Manzoor Ahmad Reshi, Government Gunman [Ikhwan]
8. Bashir Ahmad Parray alias Bilal, Government Gunman [Ikhwan]
9. Manzoor Ahmad Parray, Government Gunman [Ikhwan]

Case Information

5 October 1996.

Read Chapter 2: Theatres' of Violence-part C relating to the Saderkoot Massacre.

⁷⁴ Information on this FIR and case [although no details of the Police Station were available] was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By letter dated 9 July 2012, information was provided by the Jammu and Kashmir Police in the form of a letter dated 15 June 2012 from the Deputy Superintendent of Police, Headquarters, Srinagar that this FIR was scrutinized in the police stations of the Srinagar District and no case involving the alleged perpetrator was found.

Case No. 94Victim Details

Abdul Ahad Mir [Extra-Judicial Killing (Custodial Killing)]

Son of: Assadullah Mir

Resident of: Sanoor, Kalipora, Beerwah, Budgam District

Alleged Perpetrators

1. Mushtaq Ahmed Paul, CAT [Informer for the Army], Camp Dharmuna
2. Major Nayar [Operational name: Sunder Ram Wakate], 20 Grenadiers, Army, Camp Russu

Case Information

First Information Report [FIR] no.314/1997 u/s 302 [Murder] was filed at the Beerwah Police Station⁷⁵.

The 21 December 2011 communication from the Jammu and Kashmir Police states that on 12 September 1997, the guard of Village Sanoor, Kalipora, Ghulam Rasool Ganaie reported to the Beerwah Police Station with a written application to the effect that on 10 September 1997 army personnel along with their informer, Mushtaq Ahmed Paul of Dharmuna Camp arrested one Abdul Ahad Mir and on the next day the army called his father and the Lambardar [Numberdar, de facto revenue authority in the village] of the village and handed over the victim in a critical condition. Abdul Ahad Mir died. He was a released militant and was now silent.

The case was closed as chargesheeted and the case file was sent to the Government to seek sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA].

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under AFSPA, stated on 6 September 2011 in relation to this case that sanction was sought from the Ministry of Defence on 22 May 2001 for Major Nayar and was awaited.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir four years to investigate and process the case for acquiring sanction for prosecution under AFSPA, which apparently helped the perpetrators in evading justice.

Further, no information exists on what proceedings, if

any, were conducted against Mushtaq Ahmad Paul.

Further, available documents from the Ministry of Defence do not mention this case at all, thereby suggesting that the case was never received on their end.

It needs to be ascertained whether the Jammu and Kashmir Government has at all sent the case for sanction for prosecution to the Ministry of Defence and whether the Ministry of Defence has misplaced the case file.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 95Victim Details

Balbir Singh [Extra-Judicial Killing]

Tailor

Son of: Gulab Singh

Resident of: Mehjoor Nagar, Srinagar

Alleged Perpetrators

1. Major Avtar Singh, 103rd Battalion Territorial Army, deployed at Rawalpura, Srinagar
2. Mohammad Ashraf Khan [Operational names Umar / Bhai Jan], son of Habibullah Khan, Government Gunman [Ikhwan]

Case Information

First Information Report [FIR] no.5/1997 u/s 364 [Kidnapping/Abducting to murder], 302 [Murder], 201 [Causing disappearance of evidence/giving false information] Ranbir Penal Code, 1989 [RPC] was filed at the Rajbagh Police Station⁷⁶. By communication dated 30 November 2013 from the Jammu and Kashmir Police it was stated that sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] was awaited. By communication dated 22 April 2014 from Jammu and Kashmir Police information was provided that the chargesheet in the case had yet to be submitted as sanction was awaited. A copy of the FIR was provided. The FIR, filed on 23 January 1997, states that the Special Investigation Team apprehended alleged perpetrator no.2 who implicated alleged perpetrator no.1 in the crime. Subsequently, Major Avtar Singh and his other associates killed and disposed off the body.

As per a letter dated 23 October 2000 from the Senior

⁷⁵ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 21 December 2011 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

⁷⁶ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

Superintendent of Police [SSP], Srinagar to the Deputy Superintendent of Police [DSP], and a member of the Special Investigating Team, the case was closed as chargesheeted and sanction for prosecution under AFSPA was sought on 22 October 1998 and was awaited. But, the available documents on cases sent or received for sanction for prosecution under AFSPA do not refer to this case.

Various attempts were made to extradite Major Avtar Singh from Canada, and then the United States, where he had fled after being allowed to acquire a passport.

On 9 June 2012, at around 6:30 am California time, Major Avtar Singh called police authorities in the city in which he was residing and informed them that he had killed members of his family and was going to kill himself.

Subsequently, the dead bodies of Major Avtar Singh and his family were found by the police authorities at Major Avtar Singh's residence.

Despite the Jammu and Kashmir Police stating that sanction for prosecution under AFSPA was sought on 22 October 1998, the available documents from the Ministry of Defence do not mention this case at all, thereby suggesting that the case was never received on their end.

It needs to be ascertained whether the Jammu and Kashmir Government has at all sent the case for sanction for prosecution to the Ministry of Defence and whether the Ministry of Defence has misplaced the case file.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

With the recent death of Major Avtar Singh, it has been ensured that no justice, by the rule of law, will ever be meted out to him. The processes of justice have therefore ensured impunity. Yet, prosecution can still proceed against alleged perpetrator no.2, after ascertaining his role in the crime.

Case No. 96

Victim Details

Abdul Rashid Bhat [Abduction, Torture and Extra-Judicial Killing]

Age: 28

Occupation: Shopkeeper

Son of: Ghulam Nabi Bhat

Resident of: Kulangam, Handwara, Kupwara District, Jammu and Kashmir

Alleged Perpetrators

1. Major Ved Prakash Yadav, 2/8 Gorkha Rifles, Army, Camp Chogul, Handwara, Kupwara

District

Case Information

On 13 March 1998 [though in a Section 161 (Examination of witnesses by police) Criminal Procedure Code, 1989 (CrPC) statement to the police the witness refers to the event as occurring on 14 March 1998] at about 11:00 pm, army personnel led by Major V.P. Yadav came to the residence of Abdul Rashid Bhat and demanded that he accompany them to the camp. Nothing incriminating was found in the residence of the victim. When the victim's brother, Abdul Ahad Bhat, questioned Major V.P. Yadav, he too was taken along. While the victim was taken in a jeep, Abdul Ahad Bhat was asked to walk along with the army soldiers. When Abdul Ahad Bhat reached the Chogul Camp he heard the victim crying from inside a room. Abdul Ahad Bhat ran towards the room and opened the door and saw Major V.P. Yadav beating the victim. The victim was bleeding from his right eye. Abdul Ahad Bhat asked Major V.P. Yadav not to torture his brother but the Major said that he would kill the victim and Abdul Ahad Bhat as well. Abdul Ahad Bhat was taken away to another room and kept there for the night.

At about 1:30 am Abdul Ahad Bhat heard activity and a doctor being called for because the victim had died. Subsequently, an army person brought Abdul Ahad Bhat some tea and told him that the victim had been killed and he would be killed as well.

At about 8:00 am in the morning, police personnel from the Handwara Police Station came. Abdul Ahad Bhat was brought out in the compound of the Camp and he saw Major V.P. Yadav sitting on a chair. Abdul Ahad Bhat asked him why he had killed his brother. Major V.P. Yadav asked him how he knew he had killed his brother to which Abdul Ahad Bhat responded that he had seen the torture and he had heard everything. Abdul Ahad Bhat was then taken to Handwara where he learnt that the victim's body was at a hospital. The body was kept in police custody for three days as the family of the victim refused to bury the body without any action in the matter. The people in the village protested the killing of the victim.

The family of Abdul Rashid Bhat states that they have been routinely harassed in connection with the filing of the above case. Raids have been conducted on their house, and they even heard of a plan to abduct members of the family. Abdul Ahad Bhat alleges that he was informed by Chowdhary Mohammad Ramzan, then Minister of the Jammu and Kashmir Government, and Mohammad Sultan Mir, then Member of the Legislative Council, that the father of Major V. P. Yadav had refused to fight in the Kargil war as a case was registered against his son. The Minister of Defence had therefore written to the Chief Minister of Jammu and Kashmir informing him of this situation. Following this, Chowdhary Mohammad Ramzan and Mohammad Sultan Mir called Abdul Ahad to Srinagar

for a meeting at the Member of Legislative Assembly Hostel. Major V. P. Yadav was present at this meeting. Major V. P. Yadav asked that the case be withdrawn in exchange for Rs. 22,00,000 and other employment benefits. The brother of the victim refused.

The army filed first information report [FIR] no. 30/1998 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition/possession/manufacture/sale of prohibited arms/ammunition]/25 [Punishment for certain offences] Arms Act, 1959 at the Handwara Police Station which stated that the victim was a militant, had confessed and led the army to a site in Kulangam where he opened fire, in the early hours of the morning and was killed in the cross fire. He was digging under the pretext of recovering the arms when he pretended to rest and then he fired. He fired two rounds from a pistol and then started to run. On this he was shot dead. Arms and ammunition were recovered. Information provided by the Jammu and Kashmir Police suggests that the version of events submitted by the army was disbelieved by the police, and the FIR was closed.

The family of the victim filed FIR no. 31/1998 u/s 364 [Kidnapping / Abducting to murder], 302 [Murder] Ranbir Penal Code, 1989 [RPC] at the Handwara Police Station with their version of the incident on 14 March 1998 by Sonaulah Bhat, son of Haji Kabir Bhat. The FIR states that the army entered the residence at 10:00 pm. Dead body of the victim was found the next morning at the Handwara police station. He had been beaten to death. A chargesheet was produced in court by the police on 18 April 2000 against Major V. P. Yadav but the family of the victim states that the proceedings have since stalled⁷⁷. From information available from the Jammu and Kashmir Police, the alleged perpetrator appears to have been arrested and then released on bail.

The Gorkha Rifles instituted court-martial proceedings in the State of Himachal Pradesh against Major V. P. Yadav. While two brothers of the victim were asked to testify in March 2010, they were unable to do so as the proceedings were being conducted in Himachal Pradesh and they were unable to travel that far.

The victim's family approached the State Human Rights Commission [SHRC] which issued its final decision on 8 May 2001 and recommended relief of at least Rs. 3,00,000. The family of the victim received Rs. 1,00,000 ex-gratia government relief and also received compassionate employment under SRO-43 [Statutory Rules and Orders].

The only document presently on record [as the charge sheet filed is not with the IPTK] for the purposes of analysis is the SHRC final decision of 8 May 2001. The SHRC decision was based in part on a report dated 28 February 2001 by the Inspector General of Police [IGP], Kashmir. The police report confirmed the allegations by the victim's family. The report also confirmed that the victim was a common citizen and was not associated with any banned organization. Finally, that a charge sheet was filed against Major V. P. Yadav on 18 April 2000. The SHRC therefore found that the victim was an innocent person having no connection with any subversive activities and was tortured to death. The SHRC described the incident as "a pure and simple murder".

The Jammu and Kashmir Police and subsequently the SHRC clearly indict the armed forces, particularly Major V. P. Yadav, in the killing of the victim. What is unfortunate in such a clear case of murder is that a charge sheet filed in the year 2000 has not resulted in the trial and arrest of the victim some twelve years later. While it appears that the court-martial proceedings have been conducted it is unfortunate that the access to this court-martial for the family of the victim was not considered.

Subsequently, what transpired in the court-martial proceedings was not communicated to the family members of the victim.

Further, this case does not find any mention in the information provided in relation to Court-Martials conducted by the army. Therefore, it is likely that the alleged perpetrator may have been exonerated. Finally, the allegation made by Abdul Ahad Bhat regarding the collusion of senior ministers of the Government of Jammu and Kashmir and Major V. P. Yadav in the attempted cover up of the killings needs to be seriously investigated.

Case No. 97

Victim Details

Altaf Ahmed Dar [Abduction, Torture and Extra-Judicial Killing (Custodial Killing)]

Age: 30

Occupation: Horse cart owner (Tonga driver)

Son of: Ghulam Muhammad Dar

Resident of: Aarampora, Qamarwari, Srinagar

Alleged Perpetrators

1. Haq, Station House Officer [SHO], Parimpora Police Station, Jammu and Kashmir Police

⁷⁷ Information on the FIRs was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Another RTI was filed on 18 December 2012 to Jammu and Kashmir Police regarding custodial killings in Jammu and Kashmir between 1989 and 2012. By communication dated 4 March 2013 information was provided and a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. By communication dated 9 December 2013 from the Jammu and Kashmir Police a copy of both FIRs was provided. In FIR no. 30/1998 the police also submitted a document that suggested that the FIR had been closed. Further information sought through RTI dated 14 November 2014.

Case Information

On 25 June 1998, the family of Altaf Ahmed Dar states that at about 11:45 pm, a group of Special Operations Group [SOG] of the Jammu and Kashmir Police personnel headed by SHO Haq raided the victim's house. After barging into the house, they asked Altaf Ahmed Dar about his old friend Mushtaq Ahmed, who was a militant. Altaf Ahmed Dar told them that he had no information about him nor was he associated with him. Then he was locked inside a room and tortured. The family members were kept in a locked room. The family of Altaf Ahmed Dar states that he was crying and was pleading his innocence. Altaf Ahmed Dar was tortured for about 45 minutes after which he stopped crying. SHO Haq took him away. On the same night, the family went to the Qamarwari Police Post and reported the matter but they refused to file the report.

The next morning, at about 10:00 am, the family along with the neighbors staged a protest outside the Police Station. A person told the family later that Altaf Ahmed Dar was hospitalized at Sher-e-Kashmir Institute of Medical Science [SKIMS]. Then the family rushed to the hospital where Altaf Ahmed Dar was in the intensive care unit on a ventilator. On 28 June 1998, the doctors declared him dead. He had died due to the torture, his family states. The dead body was later taken to the Police Control Room, Srinagar. Then an autopsy was conducted. On the same day at about 4:00 pm the body was handed over to the family.

The family of Altaf Ahmed Dar approached the State Human Rights Commission [SHRC] alleging the torture and killing of Altaf Ahmed Dar by SHO Haq. The SHRC issued its final decision on 25 September 2001. The SHRC received a report from the Inspector General of Police [IGP], Kashmir that stated that Altaf Ahmed Dar had been arrested in relation to another case.

Subsequently, during interrogation, it was confirmed that Altaf Ahmed Dar had been involved in this other case. When Altaf Ahmed Dar was being taken in a vehicle, he jumped out and sustained injuries. The family of Altaf Ahmed Dar denied this version of events.

The SHRC heard the evidence of witnesses that testified to the arrest of Altaf Ahmed Dar and that he had no links with any militants. The SHRC confirmed the torture and death of Altaf Ahmed Dar by the police and recommended ex-gratia government relief of Rs.1,00,000.

First Information Report [FIR] no.139/1998 u/s 302 [Murder], 307 [Attempt to murder], 423 Ranbir Penal Code, 1989 [RPC] and 3/25 Explosive Substances Act at the Parimpora Police Station, was the FIR under which Altaf Ahmed Dar was arrested. FIR no.190/1998 u/s 224, 511 Ranbir Penal Code, 1989 [RPC] at Parimpora Police Station was filed against Altaf

Ahmed Dar for affiliation with militancy and escaping from the custody of the police after his implication under FIR no.139/1998. This incident of the escape from the police is dated 27 June 1998.

Despite the registration of these FIR's and the position taken by the Inspector General of Police [IGP], Kashmir before the SHRC, three other letters from police authorities are on record.

First, a letter from the Qamarwari Police Post dated 27 July 2008 which states that Altaf Ahmed Dar was arrested by unknown armed forces on 28 June 1998 and was injured during the investigations. This letter confirms that Altaf Ahmed Dar was not involved in any militancy activities.

The second letter is from the Senior Superintendent of Police [SSP], Criminal Investigations Department [CID], Special Branch, Kashmir which also confirms that Altaf Ahmed Dar was not involved in any militancy activities. Third, a letter dated 31 January 2009 addressed to the SHO, Parimpora Police Station also confirms that Altaf Ahmed Dar was not involved in any militancy related activities. This letter is from the In-Charge of a police post, but the specific police post is unclear from the letter.

But, continuing with the contradictory positions of the police authorities, a letter dated 17 June 2008 from the IGP, CID, Jammu and Kashmir, Srinagar to the Deputy Commissioner [DC], Srinagar, states that Altaf Ahmed Dar was found involved in subversive activities following investigations in FIR no.139/1998 and a chargesheet was produced in court against five persons [presumably including Altaf Ahmed Dar]. FIR No.190/1998 was closed by declaring the perpetrators as untraced following the death of Altaf Ahmed Dar. Information on both FIR's was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 2 June 2012 from the Jammu and Kashmir Police the copies of the FIR's were provided. Further information sought through RTI on 15 October 2013 on both FIRs. By communication dated 30 November 2013 from the Jammu and Kashmir Police the "final report" in FIR 190/1998 was provided. This signed piece of paper is undated. It states that the case is closed as untraced as the victim died on 28 June 1998. Further, that this FIR was filed when the victim tried to escape and injured himself on the way to the police station. By communication dated 22 April 2014 from the Jammu and Kashmir Police it was stated that the closure report was yet to be submitted before a competent court. Oddly, FIR 139/1998 is written as "139/2013". By the same 30 November 2013 communication, FIR and chargesheet in FIR 139/1998 are provided.

On the non-implementation of the SHRC recommendations, the family of Altaf Ahmed Dar approached the High Court of Jammu and Kashmir to seek the ex-gratia government relief recommended and compassionate employment under SRO-43

[Statutory Rules and Orders].

On 27 April 2006, the High Court observed that the Government of Jammu and Kashmir consider granting the ex-gratia government relief due to the victim's family. On the issue of compassionate employment under SRO-43 [Statutory Rules and Orders], the High Court stated that the victim's family may present its claim before the Government of Jammu and Kashmir.

No ex-gratia government relief or compassionate employment under SRO-43 [Statutory Rules and Orders] have been received by the family of Altaf Ahmed Dar.

The family of Altaf Ahmed Dar gave a statement to the IPTK on 2 March 2012.

Strangely, the SHRC has failed to fix the responsibility of the crime on SHO Haq despite the family of the victim testifying against him and the SHRC confirming the involvement of the police in the crime.

Further, the SHRC should have made recommendations for a separate and independent investigations process particularly as SHO Haq was also of the Jammu and Kashmir Police. The SHRC, as in other cases, should have also recommended for the filing of a correct FIR and investigations against police officials of the Parimpora Police Station responsible for the filing of the false FIR's.

The SHRC should also have recommended action against the IGP, Kashmir for the false representations made before the SHRC.

Finally, the High Court order on relief and compensation was weak and has resulted in the family of the victim still awaiting relief and compensation.

Case No. 98

Victim Details

Mohammad Maqbool Mir [Abduction, Extra-judicial killing]

Age: 58

Occupation: Teacher [he was a sympathizer of the Jamaat-e-Islami]

Son of: Mohammad Akbar Mir

Resident of: Chaksari, Warpora, Pattan, Baramulla district

Alleged Perpetrators

1. Pandey, Major, Chaksari army camp, Chaksari
2. Ganesh Bhat, Captain Adjutant for Commanding Officer

Case Information

At around 5:30 pm on 11 July 1998, Major Pandey visited the victim's home and asked the victim's mother to inform Maqbool to come to Ghulam Qadir's home, who was an army source and also the victim's neighbor. The victim went and the Major asked him to surrender the arms and ammunitions within two days but the victim said to him that he did not have any weapons and even after two days the answer would be same. So, he was captured and tortured then and there in Qadir's home. Then, at around 8 pm, he was taken to a *Chinar* [Maple] Tree in the vicinity and was again physically assaulted in front of the villagers. Then he was taken to Chaksari Camp, Chaksari.

One week before this incident, Major Pandey came to their home; had a meal and took Rs. 70000 in exchange for assurance of not harming them.

The next day, a crackdown took place in the village and Maqbool was brought here, before the people, and was tortured again. At around 1 pm, they took him back to the camp. The next day again there was a crackdown in the village and the victim was dragged in the entire village barefoot, to make an example of. On the same day, on 13 July, the army was looking out and searching for the victim's son Khurshid, the victim's wife Jana, and his younger brother Ghulam Mohammad Mir. They searched for them the whole day. But the family had fled upon hearing this news. They hid in the homes of their relatives in the same town.

On 14 July, the police informed the villagers about the death of Maqbool, and that his dead body was in Tangmarg. The villagers brought back the dead body and performed the last rituals. All this while, the family of the victim was in hiding at their relatives in Hamray, Pattan. They did not participate in the last rituals either.

The brother of the victim, Khurshid Maqbool Mir, gave the above statement to the IPTK on 9 June 2015.

Javed Ahmad Mir, son of Ghulam Mohammad Mir, a Hurriyat member, lodged a First Information Report [FIR] – 216/1998 at Police Station Pattan under Section 302 [murder] Ranbir Penal Code [RPC] - on behalf of the family of the victim, stating that Major Pandey had picked up the victim on 11 July and kept hold of him till 14 July. On 14 July, his dead body was handed over. Further information on this FIR was sought through RTI dated 15 July 2015.

But the FIR filed by the army stated that he was brought to Ziran, Tangmarg, for interrogation where he revealed a location of hidden weapons near the village but nothing was found. Further searches of this sort were made till at one point the victim threw an object and on "reflex" the sentries returned fire. The object turned out to be a grenade that did not explode. The witness died as a result of the shooting. Alleged perpetrator no.2 has filed the FIR – FIR no. 214/1998

at Police Station Pattan under section 307 [attempt to murder] Ranbir Penal Code [RPC] and 7/25 Arms Act. Further information on this FIR was sought through RTI dated 15 July 2015.

Important evidence is provided above and through testimony or filing of FIR [which shows the involvement of the accused in the crime], both alleged perpetrators are indicted. Major Pandey's name has also been mentioned in the FIR and this should have resulted in investigations. It appears that no court-martial has been held by the army and clearly investigations have not resulted in any request for sanction for prosecution.

Case No. 99

Victim Details

[Massacre / Extra-Judicial Killings and Rape]

Family 1

1. Hassan Mohammad Sheikh
Age: 70
Son of: Kamal Sheikh
2. Zatum Begum
Age: 35
Spouse: Abdul Ahad
3. Shaheena Akhtar
Age: 14
Daughter of: Abdul Ahad
4. Showkat Mohammad
Age: 10
Son of: Abdul Ahad
5. Sarfaraz Ahmad
Age: 8
Son of: Abdul Ahad
6. Tahira Parveen
Age: 8
Daughter of: Abdul Ahad
7. Yasmeen Akhtar
Age: 10
Daughter of: Mohammad Shafi Dar
Resident of: Bonikat [Guest, brother-in-laws daughter]

Family 2

8. Ahmad Din Sheikh
Age: 55
Son of: Kamaal
9. Sarwa Begum
Spouse name: Ahmad Din Sheikh
10. Zareena Begum
Age: 30
Spouse name: Mohammad Abdullah [pregnant, 8 months]
11. Yasmeen Akhtar
Age: 20
Daughter of: Ahmad Din Sheikh
12. Javaid Akhtar
Age: 15

Son of: Ahmad Din Sheikh

13. Shugufta Akhtar

Age: 10

Daughter of: Ahmad Din Sheikh

Family 3

14. Lassa Sheikh
Age: 65
Son of: Ibrahim Sheikh
15. Zainab Bi
Age: 50
Spouse: Lassa Sheikh
16. Mohammad Iqbal
Son of: Lassa Sheikh
17. Shaheena Kousar
Age: 12
Daughter of: Lassa Sheikh
18. Jabeena Kousar
Age: 8
Daughter of: Lassa Sheikh
19. Tanveera Kousar
Age: 4
Daughter of: Lassa Sheikh

All residents of: Sailan, Surankote, Poonch District

Alleged Perpetrators

1. J.P. Singh, Superintendent of Police [SP] Poonch, Jammu and Kashmir Police
2. Major Gaurav, 9 Paracommandoes, Army, Camp Bafliaz
3. Additional Superintendent of Police [ASP] Sevak Singh, Poonch, Jammu and Kashmir Police
4. Mohammad Younis [Operational name: Tiger], Special Police Officer [SPO], Surankote Police Station, Jammu and Kashmir Police
5. Mohammad Rafiq Gujjar [Operational name: Pathan], Surankote, SPO, Police line Poonch, Jammu and Kashmir Police
6. Maqsood Ahmad Khan, Havaladar Grade, Surankote Police Station, Jammu and Kashmir Police
7. Mohammad Akbar, Havaladar Grade, Surankote Police Station, Jammu and Kashmir Police

Case Information

3/4 August 1998.

Read Chapter 2: Theatres' of Violence-Part D relating to the Sailan Massacre.

Case No. 100

Victim Details

Mohammad Amin Wani [Torture, Extra-judicial killing]
Age: 45

Son of: Ghulam Ahmad Wani
Resident: Prang Kangan, Gandarbal district

Alleged Perpetrators

1. Captain Tiwari, 197 Field Regiment, Barawall Camp

Case Information

On the night of 18 August 1998, an unidentified grenade was thrown towards the northside of Mohammad Amin Wani's house but the grenade did not explode. As soon as the army came to know about this incident, they surrounded Mohammad Amin Wani's house and took him under custody for interrogation. Although Mohammad Amin Wani repeatedly said that he did not know anything; the army personnel, headed by Captain Tiwari of the 197 Field Regiment, tortured him. Along with Mohammad Amin Wani, 11 other civilians were also arrested. They included the following: Hilal Ahmad Wani, Manzoor Ahmad Sheikh, Sahad Ahmad Sheikh, Tahir Ahmad, Gulle, Abdul Ahad, Muzaffar Ahmad, Shahid ul Islam, and Tanvir Ahmad Sheikh.

The army officials themselves confessed that Mohammad Amin Wani was being tortured. In addition, Captain Tiwari, who was the head, repeatedly told the other army personnel to remember the person. Captain Tiwari was infamous in the area as he made frequent raids.

The next day, at about 7 am, the army again surrounded the village. Mohammad Amin Wani was reciting Quran, his son Muzamil came running and said, "army is looking for you father". As soon as he came out of the house, army personnel, without giving any explanation, started torturing him. Till 3 pm, they searched his house. The army personnel, after torturing him for the entire day, took him to Barawall camp. He was separated from the other arrested civilians.

According to Sajad Ahmad Sheikh, resident of Prang, Mohammad Amin Wani was with him at Kangan camp. They tied everyone's eyes but Sajad Ahmad Sheikh's band was to some extent loose enough that he could see what was happening. He saw that Mohammad Amin Wani and Manzoor Ahmad Sheikh [brother of Sajad Ahmad Sheikh] were already present in the room. Sajad Ahmad Sheikh also mentioned that along with adults, the army personnel also arrested children who had nothing to do with political or militant outfits. Mohammad Amin Wani's condition was so bad that he could not go to the bathroom; when he requested the army personnel, they refused. Sajad Ahmad Sheikh was an eye-witness to this. Lastly, he told Mohammad Amin

Wani's family that Mohammad Amin Wani was taken to the other room.

After twenty minutes, when they brought Mohammad Amin Wani back, he was not in a condition to move or talk. One and a half hours later, Mohammad Amin Wani was still not moving. Later on, an army officer brought the army doctor for checkup. After that, they took him and declared him dead.

Along with Sajad Ahmad Sheikh, there were two other civilians named Tahir Ahmad Mir and Hilal Ahmad Wani].

The wife of the victim, Haseena Begum, gave the above statement to the IPTK on 22 April 2015.

The statement is clear, and cogent evidence is presented of the torture/killing by the alleged perpetrator. The allegations warrant further investigation. The statements of the eye-witnesses are crucial and should be recorded.

Case No. 101

Victim Details

Mohi-ud-Din Amin Wani [Abduction and Extra-Judicial Killing (Custodial Killing)]
Son of: Ghulam Ahmad Wani
Resident of: Preng, Ganderbal District

Alleged Perpetrators

1. Major P.K.Singh [Lieutenant Colonel as of 2009], 197th Field Regiment, Army
2. Major Abhay Tiwari [Retired as per information provided in 2009], 197th Field Regiment, Army

Case Information

On 19 August 1998 Mohi-ud-Din Amin Wani was killed in custody.

First Information Report [FIR] no. 40/1999 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Kangan Police Station⁷⁸. The 9 May 2012 communication from the Jammu and Kashmir Police states that on 19 August 1998 the 197th Field Regiment approached the Kangan Police Station with an application stating therein that the health condition of Mohi-ud-din Wani, apprehended during search operations, had deteriorated.

The army doctors advised them to shift the said person to the Sub-District Hospital, Kangan for further treatment. The doctors declared him brought dead.

78 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 9 May 2012 from the Jammu and Kashmir Police a copy of the FIR and chargesheet were provided.

The inquest proceedings were ordered / initiated u/s 176 [Inquiry by Magistrates into cause of death] Criminal Procedure Code, 1989 [CrPC]. To this effect FIR no. 40/1999 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was registered at the Kangan Police Station against the 197th Field Regiment.

The investigations were taken up and then transferred to the Crime Branch, Srinagar for further investigations.

The investigation of the case stands closed as chargesheeted against the 197th Field Regiment and the case file has been submitted for sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA].

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that it was under consideration.

It is noteworthy that a 13 year old case remains pending with the Ministry of Defence which is apparently helping the perpetrators in evading justice.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 102

Victim Details

Abdul Ahad Wani [Extra-judicial killing]

Age: 70

Occupation: Principal of an educational institution

Son of: Haji Wali Mohammad Wani

Resident of: Wani Mohalla, Safapora, Baramulla district

Alleged Perpetrators

1. Mana Rada, Government Gunman [Ikhwan]
2. Shabir, resident of Asham, Government Gunman [Ikhwan]
3. Irshad Mir, resident of Ajas, Government Gunman [Ikhwan]

Case Information

Sanaullah Wani, a shopkeeper in Safapora, who is not only an eyewitness but also the younger brother of the victim, stated that Ikhwan were killing innocent civilians, due to which he was hiding in his elder brother's other house; with the help of a window, he could clearly see what was happening in his brother's house.

According to Sanaullah Wani, his brother was a retired principal who had nothing to do with any political party. On 13 September 1998, Ikhwan, working under the command of Kuka Parray and Usman Majid, and under the local leadership of Ayoub Nabdi, invaded Abdul Ahmad Wani's house. Ikhwan named Mana Rada, Shabir Asham, Irshid Mir and Ajas searched every corner looking for his brother Sanaullah Wani. They did not find anyone except his elder brother Abdul Ahmad Wani who was praying. From behind, an Ikhwan shot him to death with the help of four bullets.

The Safapora unit of the Ikhwan was working with 13 Rashtriya Rifles [RR] camp.

The brother of the victim, Sanaullah Wani, gave the above statement to the IPTK on 16 May 2015.

The witness statement is clear, and cogent evidence is presented of the killing by the alleged perpetrators. The allegations warrant further investigation particularly on the command that the army [13 RR] had over the Ikhwan who killed the victim. This would establish the responsibility, if any, of the army in the killing.

Case No. 103

Victim Details

Nissar Ahmad Dar [Extra-Judicial Killing]

Age: 19

Occupation: Daily wage with the Power Development Department

Son of: Mohammad Akbar Dar

Resident: Ratharpura, Dadsara, Tral, Pulwama District

Alleged Perpetrators

1. Subedar U.S. Thappa, 31 Counter Intelligence Unit [CIU], Army
2. Havaldar Harjinder Singh / Harjinder Singh, 31 Counter Intelligence Unit [CIU], Army
3. Havaldar J.M. Khand / G.M. Khan⁷⁹, 31 Counter Intelligence Unit [CIU], Army
4. Sepoy Surinder Singh, 31 Counter Intelligence Unit [CIU], Army

Case Information

On 5 December 1998 at about 3:00 pm, Nissar Ahmad Dar left his office at Awantipora with his brother-in-law Ghulam Rasool Bhat and headed towards his house. Ghulam Rasool Bhat was riding the scooter and Nissar Ahmad Dar was seated behind him. The scooter was being followed by a gypsy vehicle and at some point they were fired upon from the gypsy.

⁷⁹ The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] refers to this persons as "JM Khand", whereas the Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecutions under AFSPA, on 6 September 2011 refers to him as "G.M.Khan".

While Ghulam Rasool Bhat managed to escape, Nissar Ahmad Dar was unable to. The gypsy stopped, and the personnel in the gypsy shot at Nissar Ahmad Dar once again. Witnesses on the scene stated that the person who fired at the victim was uniformed.

Ghulam Rasool Bhat was a surrendered militant. This assertion of the family is confirmed by a 14 July 2000 communication to the District Magistrate, Pulwama, from the Additional District Magistrate, Pulwama which stated that Ghulam Rasool Bhat was a militant but presently worked in the electric department.

Following the investigations, the family was given to understand that personnel of the CIU were responsible for the killing. Another brother-in-law of Nissar Ahmad Dar, Ghulam Hassan Bhat pursued the case with the police. But, in April 2000 he was shot dead by persons in army uniform at his residence.

The family of Nissar Ahmad Dar gave a statement to the IPTK on 6 February 2012.

First Information Report [FIR] no.154/1998 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] and 3 [Licence for acquisition and possession of fire arms/ammunition]/25 [Punishment for certain offences] Arms Act, 1959 was filed at the Awantipora Police Station on 5 December 1998⁸⁰. The communication of 15 May 2012 stated that the case was registered on 5 December 1998 acting upon reliable information that one Nissar Ahmad Dar s/o Mohammad Akbar r/o Dadsara was shot dead by unknown gunmen and his dead body was lying on the spot. During the course of the investigations the case was closed as chargesheeted against the alleged perpetrators and they were arrested. But, sanction was denied by the Ministry of Home Affairs on 8 April 2010. The case was still under investigation.

The family filed an application at the SHRC but do not know the present status. The family of Nissar Ahmad Dar received Rs.1,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders] benefits.

A letter to the Superintendent of Police [SP], Pulwama, from the SP, Awantipora, dated 14 May 1999 states that Nissar Ahmad Dar nor any member of his family was found to be involved in any subversive activities. The letter also confirms that the firing was from a white colored gypsy vehicle and that evidence reveals that the persons who fired were from the CIU. A letter from the SP, Pulwama, to the Deputy Commissioner, Pulwama dated 7 June 1999 reiterates and confirms the above findings.

The Ministry of Defence, in its affidavit before the High

Court of Jammu and Kashmir in 2009 on sanctions for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was received in May 2007 and was under consideration.

The Ministry of Defence, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under AFSPA, stated on 10 January 2012 in relation to this case that sanction was declined on 8 April 2010. Further, in this communication the Ministry of Defence states that "the case was registered after four years of the incident. Accusation was based on suspicion as there are contradictory statements by the witnesses". The Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction was declined.

In the instant case, the Jammu and Kashmir Police stated on 15 May 2012 that sanction was declined by the Ministry of Home Affairs, while in fact sanction was declined by the Ministry of Defence as the case pertains to their jurisdiction. Further, the assertion of the Ministry of Defence that the case was registered four years after the incident is patently false as FIR no.154/1998 was filed on 5 December 1998, the very day of the incident. While declining the sanction the argument raised by the Ministry of Defence that the accusation was based on suspicion and that there are contradictory statements by witnesses is unsubstantiated.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir nine years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

Case No. 104

Victim Details

Zahoor Ahmad Bhat [Abduction, Torture, Extra-judicial killing]

Age: 36

Occupation: Government Teacher [he was affiliated with the Hizbul Mujahadeen since 1990]

Son of: Noor-ud-din Bhat

Resident of: Bhat Mohalla, Pattan, Baramulla district

⁸⁰ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. Information was provided by a communication dated 15 May 2012 from the Jammu and Kashmir Police. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

Alleged Perpetrators

1. Abdul Rashid Khan alias Rashid Billa, Sub-Divisional Police Officer [SDPO], Jammu and Kashmir Police
2. Ghulam Mohammad Mir alias Muma Kanna, Government Gunman [Ikhwan]

Case Information

The victim, Zahoor Ahmad Bhat, went to Pakistan for arms training and came back on 1 August 1990. He was first arrested during a crackdown on 17 March 1992. The crackdown lasted for three days starting from 15 March till 17 March. The victim moved from one place to another in search of hideouts. On 17 March, he was arrested from Sub-District Hospital Pattan along with a doctor. Both the victim and the doctor were taken to Badami Bagh Cantonment, Srinagar. The doctor was released within a week. But the victim was kept in detention till 29 January 1993.

Through this doctor, Zahoor sent information to his family. But the family got information about him only after one-and-a-half months. Then, they went to meet him in Badami Bagh. The family met the victim thrice at Badami Bagh. When the family met the victim for the first time, his right hand was plastered, implying he was tortured while in detention. After sometime, he was shifted to Kot Bhalwal Jail, Jammu. His family went to Jammu twice to meet him. From there, he was shifted to central jail, Jammu and then to central jail, Srinagar and finally to Baramulla District Jail from where he was released on 29 January 1993.

After his release, he started a medical shop. In 1995, an unidentified Ikhwan entered his shop and started firing. Zahoor received 5 shots and was taken to the hospital where he underwent surgery and took around 7-8 months to recover. After that, he and his wife and his one-year-old child shifted to Sanatnagar, Srinagar. While in Srinagar, he was appointed as a teacher in Government Primary School, Magam [Malburshan]. He used to travel back and forth from Sanatnagar to the school daily.

In 1996, the army picked him up from his school at Magam. A local Ikhwan named Muma Kanna accompanied the army. He was arrested and kept in Magam army camp for five days. He was tortured in the camp and was released after five days. His wife saw torture marks on his back. In Magam Camp, an army major assured him about his safety as he was a government employee and suggested him to return to their house at Pattan. He then moved back to his home in Pattan from Sanatnagar.

He stayed at home for about a month when the army of Chaksari Camp again picked him up. He was picked up at night and was kept for around five days and then released. The army, which came to pick him up, informed the family about their camp and where they

could meet the victim. They also asked the family not to worry. Upon his release, he was asked to go to Palhallan camp every Sunday to mark his attendance. He followed the instructions and resumed his daily life.

On 7 December 1998, at around 10:30 pm, officers of the Special Operations Group [SOG] and government gunmen came and picked him up from his home and killed him at Zangam National Highway. He was picked up violently in whatever position he was, without shoes. SDPO Abdul Rashid Khan alias Rashid Billa was present during his arrest. His family and neighbors went to the police station to lodge a First Information Report [FIR] but police personnel did not let them enter the police station. On 8 December 1998, family heard the news of a person found dead in Zangam. They went there at around 8 am and found the dead body of Zahoor there. He had been shot on his forehead. They brought him home and performed last rituals.

His family tried to lodge an FIR but the police did not file it. After some time, when they again went to the police station, and they were handed over an FIR filed by police themselves. But the police falsified the information stated in the FIR. The family also approached DSP Farooq Reshi to file a true FIR but he did not pay any heed. FIR no. 370/1998 at Police Station Pattan was filed on 8 December 1998 under Section 302 [murder] Ranbir Penal Code and 7/25 Arms Act. Further information on this FIR was sought through RTI dated 15 July 2015.

The wife of the victim, Rumaya Sami, gave the above statement to the IPTK on 9 June 2015.

The family of the victim has provided evidence on two different incidents: torture, where Muma Kanna is involved in the "arrest", and his killing, where SDPO Rashid Billa is involved. Both the alleged perpetrators are clearly involved in both crimes but their exact role would need to be further clarified. Further investigations are also required on who physically tortured the victim and then who killed him. Also, Ghulam Mohammad Mir has not been prosecuted and instead he received recognition from Government of India with the conferring of the *Padma Shri*, fourth highest civilian award, in 2010.

Case No. 105**Victim Details**

Gulzar Ahmad Bhat [Abduction, Wrongful Confinement, Torture and Extra-Judicial Killing]

Occupation: Mason

Son of: Ghulam Rasool Bhat, Fata

Resident of: Rangardhar Mohalla, Sadarkote Balla, Bandipora District

Alleged Perpetrators

1. Major Vishal Sharma, 18 Grenadiers, Army, Chak Hajin Camp
2. Rashid Billa, Government Gunman [Ikhwan] and Commander, Ikhwan
3. Ghulam Mohammad Margoo [Operational name: Mohammad Pir], son of Gaffar Margoo Government Gunman [Ikhwan]

Case Information

In January 1999, the army had come on numerous occasions to take Gulzar Ahmad Bhat for questioning or work at the camp. They were, according to the family of Gulzar Ahmad Bhat, sent by the Ikhwan.

On 22 January 1999, Rashid Billa came to Gulzar Ahmad Bhat's house and asked for money to ensure that he would not be harassed again. The family gave him Rs. 50,000. The reason for the harassment of Gulzar Ahmad Bhat, according to his family, was that he was being accused of tearing the election posters of Kuka Parrey, a well-known Ikhwan.

On 2 February 1999 at about 4:00 pm, Major Vishal Sharma, Rashid Billa and Ghulam Mohammad Margoo came to the residence of Gulzar Ahmad Bhat and abducted him.

Gulzar Ahmad Bhat was taken to the Chak Hajin Camp. His father went to the camp where he was asked to pay money for the release of Gulzar Ahmad Bhat.

On the following morning, 3 February 1999, the father of Gulzar Ahmad Bhat was informed that his son had died in a blast at the Dodwan forest at 5:00 am during a raid of a dump site which had been identified by the army.

On 4 December 1999 the family received some pieces of the body of Gulzar Ahmad Bhat.

The father of Gulzar Ahmad Bhat states that he heard the cries of torture of the victim during the night of 2 and 3 February 1999. From information that the family received later, a Doctor from Hajin went to the Chak Hajin Camp at 4:00 am on 3 February 1999 and confirmed that Gulzar Ahmad Bhat had died due to suffocation caused by torture when a cloth had been stuffed into his mouth.

The family of Gulzar Ahmad Bhat gave a statement to the IPTK on 9 February 2012.

First Information Report [FIR] no.18/1999 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition / possession /

manufacture / sale of prohibited arms / ammunition] / 25 [Punishment for certain offences] Arms Act, 1959 was filed at the Sumbal Police Station⁸¹.

The family of Gulzar Ahmad Bhat was harassed by the army and Ikhwan to withdraw the case. The family subsequently did not follow up on the case.

The family of Gulzar Ahmad Bhat received Rs.1,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders]. The document dated 14 December 2002 from the Deputy Commissioner [DC], Baramulla awarding the SRO-43 benefits confirms, based on a report from the Superintendent of Police [SP], Ganderbal, that Gulzar Ahmad Bhat was not involved in any subversive activity.

Despite the passage of 13 years, no information exists on whether any investigations or prosecutions were conducted by the Jammu and Kashmir Police in this case.

This case serves as an example of the manner in which fear faced by families results in absolute impunity for perpetrators of crimes.

The responsibility for this impunity necessarily is with the Jammu and Kashmir Police which does not ensure the necessary space or protection for families to pursue justice.

Further, the army appears to care very little for the possibility that one of its personnel may be involved in the commission of a crime as the available documents do not suggest that even a Court-Martial was conducted in this case by the army against Major Vishal Sharma.

Case No. 106**Victim Details**

Mohammad Amin Shah [Extra-judicial killing]
Age: 35
Occupation: Professor of Chemistry, Degree College Bohripora, Kupwara
Son of: Mohammad Yusuf Shah
Resident of: Didikote, Kupwara district

Sharifa Begum [Extra-judicial killing]
Age: 30
Occupation: Lecturer in Botany, Degree College, Kupwara
Resident of: Didikote, Kupwara district

Zarifa Begum [Extra-judicial killing]
Age: 40
Occupation: Homemaker
Resident of: Didikote, Kupwara district

⁸¹ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. By communication dated 20 November 2013 from the Jammu and Kashmir Police it was stated that the case had been closed by declaring the perpetrators as untraced on 10 May 1999 and the final report was yet to be submitted to the court. Further information sought through RTI dated 14 November 2014.

Snober Shah [Extra-judicial killing]
 Age: 10
 Occupation: Student [fifth standard]
 Daughter of: Mohammad Amin Shah
 Resident of: Didikote, Kupwara district

Alleged Perpetrators

1. Colonel Bali, Commanding Officer, 24 Rashtriya Rifles [RR], Gushi picket [Hiri Camp]
2. Sarwar Ganai, resident of Chogul, Government Gunman [Ikhwan]
3. Mushtaq Sheikh, resident of Kupwara town, Government Gunman [Ikhwan]
4. Sadiq Khan, resident of Didikote, Government Gunman [Ikhwan]
5. Haseen Khan, resident of Didikote, Government Gunman [Ikhwan]

Case Information

In the intervening night of 11 and 12 May 1999, around 50 personnel of the 24 RR Camp at Gushi led by Ikhwan Sarwar Ganai [resident of Chogul], Mushtaq Sheikh [resident of Kupwara Town], Sadiq Khan and Haseen Khan – two of whom [Sadiq Khan and Haseen Khan] were the victim's neighbors – entered the house of Mohammad Amin Shah and killed him, his wife Sharifa, his daughter Snowber and his sister-in-law Zarifa. The army men and the Ikhwans were uniformed and carried weapons.

Colonel Bali had frequently threatened the family saying he would kill them because the family, especially the elder brother of the victim, supported the militancy by feeding militants and providing them shelter. On the day of the massacre, around 20 persons were present in the house including women and children including Ala-ud-din Shah [son of Mohammad Yusuf Shah], his wife Zarifa Begum; Mohammad Yaseen Shah [son of Mohammad Yusuf Shah], his wife Misra; Mohammad Amin Shah, his wife Sharifa and their children Snowber and Misbah, aged 10 years and two months respectively.

Sanaullah Shah [son of Mohammad Yusuf Shah] was not present in the house that day but the event was witnessed by his wife Naseema.

Army personnel and Ikhwans entered the house upon which Ala-ud-din Shah, the eldest of the four brothers, hid himself in the attic fearing retaliation from the army in light of the continuing threats from Colonel Bali. The raiding party turned off the lights in every room and bolted the doors to the rooms. Upon entering the room of Mohammad Amin Shah, they beat him and shot him. They also shot his wife Zarifa and their daughter Snowber. On their way down, Zarifa, the sister-in-law of Mohammad Amin, pulled the cover off the faces of the Ikhwans, upon which one Ikhwan shot her too. The Ikhwans and the army fired shots in every room and

left in the early hours of the morning.

Two days after the incident, Doordarshan reporters visited the area; they were hosted at the army Camp in Gushi. Colonel Bali had tortured Sanaullah, brother of the victim Mohammad Amin, into saying that the incident had been perpetrated by militants and had arranged for this to be televised. However, at the camp, Sanaullah was unable to contain himself and spoke out against the army. After this, the family was repeatedly harassed due to which they moved to Srinagar, where they stayed for 5-6 years. Only Sanaullah Shah came back after this and currently resides at the house.

The brother of the victim, Mohammad Amin Shah, Sanaullah Shah, gave the above statement to the IPTK on 14 June 2015.

The family of the victim states that Sarwar Ganai was sentenced to 14 years in prison and ordered to pay Rs. 50,000 towards the family of the victims. But, Sarwar Ganai filed an appeal in the High Court and is out on bail presently. Mushtaq Sheikh is presently under-trial. But prior to that, another Mushtaq Sheikh was wrongly tried. The above proceedings appear to be a result of FIR no. 24/1999 filed at Villgam Police Station. Further, the State Human Rights Commission [SHRC] on 6 April 2001 gave its decision in this case and recommended that Rs. 10 lakhs as per the Wandhama case be given to the minor girl surviving the above massacre, and that chargesheet be filed in the case.

But, there have been no proceedings against Colonel Bali who controlled and directed the Ikhwan. The eye-witness evidence in this case is strong and therefore further investigations are warranted.

Case No. 107

Victim Details

1. Mohammad Ayub Dar [Torture and Extra-Judicial Killing (Custodial Killing)]
 Age: 17
 Son of: Abdul Rehman Dar
 Resident of: Chraripora, Pakharpora, Budgam District
2. Bashir Ahmed Dar [Torture]
 Son of: Abdul Rehman Dar
 Resident of: Chraripora, Pakharpora, Budgam District

Alleged Perpetrators

1. Inspector Waris Shah, In-Charge, Special Operations Group [SOG], Jammu and Kashmir Police, Camp Pakharpora
2. Head Constable Ichpal Singh, Special Operations Group [SOG], Jammu and Kashmir Police
3. Constable Gurmeet Singh, Special

Operations Group [SOG], Jammu and Kashmir Police

Case Information

Mohammad Ayub Dar along with his brother Bashir Ahmed Dar was lifted by the SOG Budgam on the intervening night of 1 and 2 June 1999. They were taken to the Pakharpora Police Camp and tortured. Mohammad Ayub Dar was tied with ropes on a wooden plank and tortured to death. Subsequent to this, the SOG personnel lodged a false FIR which stated that Mohammad Ayub Dar was killed in cross firing. Bashir Ahmed Dar was released.

The State Human Rights Commission [SHRC] took suo moto cognizance of the case on 7 June 1999 and issued its final decision on 26 August 2003. Rs.1,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders] for the family of the victim were recommended. Further, the SHRC recommended that a case for murder of the victim be registered against Waris Shah and his companions in the Crime Branch of the police.

First Information Report [FIR] no.77/2003 u/s 302 [Murder] and 120-B [Criminal Conspiracy] Ranbir Penal Code, 1989 [RPC] was filed at Crime Branch Kashmir. Further information sought through RTI dated 14 November 2014. A chargesheet u/s 302 RPC was presented before the District and Sessions Judge, Budgam against the alleged perpetrators on 31 March 2005⁸².

The family of the victim filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 8/2007] against the non-implementation of the SHRC recommendations with regard to ex-gratia government relief and compassionate employment under SRO-43⁸³. Further, compensation of Rs. 15,00,000 was also sought. On 19 April 2007, the petition was disposed of with an observation that "respondents may take requisite lawful follow up action in terms of recommendation of" the SHRC.

The only document on record for the purpose of analysis is the SHRC final decision of 26 August 2003. The SHRC received a report from the Prosecuting Officer, Budgam on 14 June 2000.

This report stated that on 2 June 1999 Waris Shah

lodged a written complaint with the Char-e-Sharif Police Station to the effect that during the intervening night of 1 and 2 June 1999, SOG, Pakherpora, along with CRPF personnel raided the Dalwan village. The raiding party came under heavy firing from militants, fire was returned and Yashpal Singh [no. 213] [but, the FIR refers to Ichpal Singh] sustained bullet injuries, and one unidentified dead body was also recovered from the scene of crime along with arms and ammunitions. FIR no. 34/1999 was filed at the Char-e-Sharif Police Station⁸⁴.

The report also states that the dead body belonged to the victim, a militant. The family of the victim refuted these claims. It was stated that the victim was innocent, and was abducted for the purpose of finding his brother, Gulzar Ahmed, who was admittedly a militant.

On 1 August 2001, the SHRC referred the matter to the Crime Branch for investigations, and these investigations were concluded on 28 January 2002. The Crime Branch concluded that Gulzar Ahmed Dar, the brother of the victim, was a militant. Further, that the victim was arrested, tortured and killed by the SOG. On the antecedents of the victim, the Crime Branch stated that information could be sought from the Criminal Investigation Department [CID] of Jammu and Kashmir Police or the State.

On 8 April 2002, the SHRC sought information on the antecedents of the victim from the CID. The CID in its report confirmed the same version of events as reported by the Prosecuting Officer, Budgam on 14 June 2000.

The SHRC, based on the record before it and arguments heard, concluded that "it cannot be said that Mohammad Ayoub was a militant and got killed in an encounter". Further, that the "encounter version as put by the police, has been smashed and dashed to the ground by the other wing of the same ____ [text unclear] i.e. Crime Branch". The SHRC confirmed that the victim had been tortured to reveal the whereabouts of his brother, Gulzar Ahmed Dar. The SHRC therefore recommended that a case be registered against the alleged perpetrator, Waris Shah.

The SHRC decision is a clear indictment of the SOG, and the alleged perpetrator, Waris Shah. But, based on the record available, the only evidence to suggest the involvement of the alleged perpetrator, Waris Shah appears to be that he was the person who filed

82 An application under the Jammu and Kashmir Right to Information Act, 2009 [RTI] was filed on 18 December 2012 to Jammu and Kashmir Police regarding custodial killings in Jammu and Kashmir between 1989 and 2012. By communication dated 4 January 2013 information was provided regarding the chargesheet filed against the alleged perpetrators. Further information sought through RTI on 15 October 2013.

83 Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. Information was provided.

84 Information on this FIR was sought through RTI on 17 May 2012. By communication dated 13 June 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. Further, information was provided that the case was closed by declaring the perpetrators as untraced on 11 October 2000.

the FIR regarding the encounter. Nonetheless, and despite the passage of 13 years, it is unclear if any progress has been made on the prosecution of Waris Shah. More recently, information received suggests that a chargesheet was filed against all three alleged perpetrators. The present status of this case is unknown.

Case No. 108

Victim Details

Mohammad Ramzan Mir [Abduction, Torture, Extra-judicial killing]

Son of: Habibullah Mir

Resident of: Sheikhpura, Rafiabad, Baramulla district

Abdul Jabbar Mir [Abduction, Torture]

Son of: Gaffar Mir

Resident of: Sheikhpura, Rafiabad, Baramulla district

Ghulam Mohammad Mir [Abduction, Torture]

Son of: Khaliq Mir

Resident of: Sheikhpura, Rafiabad, Baramulla district

Abdul Majid Mir [Abduction, Torture]

Son of: Ghulam Ahmad Mir

Resident of: Sheikhpura, Rafiabad, Baramulla district

Bakhtawar Mir [Abduction, Torture]

Son of: Zabar Mir

Resident of: Hatchipora, Rafiabad, Baramulla district

Alleged Perpetrators

1. Captain Dinesh Kumar, In-Charge, 30 Rashtriya Rifles [RR], Chatoosa Camp
1. Khurshid Ahmad Khan, resident of Baramulla, Government Gunman [Ikhwan]
2. Muzaffar Khan, resident of Uri, Baramulla, Government Gunman [Ikhwan]

Case Information

Manzoor Ahmad Mir gave the following statement to IPTK on 29 June 2015.

At about 1 pm on 19 June 1999, at the instructions of Captain Dinesh Kumar of 30 RR, the local *Numberdar* [village revenue head] Abdul Khaliq Mir informed Mohammad Ramzan Mir, Abdul Majid Mir, Abdul Jabbar Mir, and Ghulam Mohammad Mir [all residents of Sheikhpura] and Bakhtawar Mir of Hatchipora, Rafiabad to report to the Chatoosa army camp, as the army wanted to clear some doubts about them. Immediately, all five men went along with the *Numberdar* to make their position clear.

In the camp, the five men were accused of feeding and

sheltering the militants. To appease the army, Ikhwans those days named people/civilians randomly for having militant links or helping militants by way of food and shelter. When they [arrestees] expressed their ignorance about any such incident and asked the army to name instances where they have offered food or shelter to militants, the army responded with torture. Captain Dinesh was supervising the torture of the villagers.

Captain Dinesh and his men first beat them harshly. After that, they were forced to drink water till their bellies swelled up. Then the wooden rollers were rolled over their legs. Thereafter, electric wires were tied up with their toes and private parts and intermittently electric shocks were given to them. The torture continued for 4-5 hours till 6 pm.

Mohammad Ramzan couldn't bear the torture and died while electric currents were continuously administered on his body. On seeing the intensity of torture, the *Numberdar* intervened and asked the officer to stop, so, he too was dragged in the line and tortured by the army. The *Numberdar* reported his torture to the concerned police station.

The two Ikhwans, Khurshid Ahmad Khan of Baramulla and Muzaffar Khan of Uri, both associated with the army, had misinformed the captain that all these arrested villagers were helping militants by providing food and shelter. The villagers were tortured in front of these Ikhwans, who were drawing sadistic pleasure out of it.

Unaware of these events, the villagers, on 21 June, staged a sit-in outside the military camp to press the army for their release. The pressure created by the villagers paid off and, except Mohammad Ramzan, all four were released. Outside the camp, people had no idea as to why Mohammad Ramzan was not released. Then, it was not possible to ask the released villagers about the fate of Mohammad Ramzan, as they were ferried in a truck to the hospital for emergency medical care.

With some improvement in the conditions of Abdul Majeed, in the evening, he broke the news of Mohammad Ramzan's death in army custody. On hearing this, Ramzan's family approached the local Member of Legislative Assembly [MLA] Dilawar Mir to retrieve the dead body from the camp. However, Dilawar Mir could not prove of any help as the army ignored his requests. When the news spread that the Ramzan's family was making efforts to get back the body, Majeed was called into the 30 RR Headquarters at Watergam, Baramulla. There the Commanding Officer asked Majeed why was he was spreading rumors of Ramzan's death to which Majeed responded that he had himself witnessed Ramzan breathing his last in the army's torture chamber. Then he was asked by the CO to change his statement, but this was not possible for him. With this, he was asked to leave the camp.

Then Majeed's relatives went to the then PDP president Mehbooba Mufti for her intervention. Mufti took the released survivors to the Chatoosa army camp where they deposed before Captain Dinesh and Mehbooba that Ramzan was killed by army in front of their eyes. Then Mehbooba asked Captain Dinesh Kumar to handover the body to the relatives.

Then the army captain identified a place in the village where they had secretly buried the body in a ditch. Mehbooba took the police and army and opened the grave. The body, which was put in a gunny bag, was pulled out of the grave. It was found that the body had decomposed to a large extent with injury marks. Then Ramzan's family took the body for last rites.

The CO and Captain Dinesh used different pressure tactics to stop the family from taking any legal recourse. The army officers threatened the family. Ramzan's widow Sara was taken to the Chatoosa camp on a few occasion was kept in the camp for nights. The pressure and harassment came in the backdrop of Ramzan's family's efforts to take legal course; already they had filed a First Information Report [FIR]. The army has also tried to lure Sara with Rs. 30000 to change her actual statement. In 2001, the army forcibly took Sara to the Deputy Commissioner's office in Baramulla, where the army forced her to give her thumb impression on a document absolving the army in front of assistant Deputy Commissioner.

Personnel from the 30 RR army headquarters at Watergam arrested Majeed for his role in retrieving Ramzan's body and embarrassing the army by engaging politicians; he was again subjected to torture for 2 days.

FIR no. 60/1999 under section 302 [murder] was filed at Police Station Panzalla. Information was sought through RTI dated 14 November 2014. By communication dated 5 January 2015, a copy of the FIR was provided and information that the case was under investigation and submitted for government sanction. Statements of eyewitnesses were recorded and evidence collected and this led to challan. Sanction for prosecution was sought for Captain Danish and against the Ikhwan.

Also on record is a typed document – with no TO or FROM address. It states that:

- On 21 June 1999, Abdul Khaliq Mir, son of Gaffar Mir, resident of Sheikhpora [Numberdar of the village] lodged a written report in Police Station Panzalla alleging that Ramzan Mir, son of Habib Mir, resident of Sheikhpora was called by in-charge of Camp Chatoosa with some other locals of village Sheikhpora and "Hachaypora".

The others were set free with serious injuries but Ramzan Mir was not. The complaint stated that the in-charge [no name taken], his subordinates and the Ikhwan Khursheed Ahmad Khan tortured the victim and Ramzan Mir's dead body was not returned to his relatives.

- A case was registered and investigations began. In-charge army camp Chatoosa stated that Ramzan Mir was apprehended by them but later on released and receipt in token was given to the police – this receipt bears the signatures/thumb impression of Ghulam Qadir Rather, Numberdar, Chatoosa; Mahinder Singh, Chowkidar, Chatoosa; Abdul Khaliq Mir, Numberdar, Sheikhpora; and Thakur Singh Josh, Sarpanch, Chatoosa. When these persons were contacted, they categorically denied the release. The police [who appear to be the author of this document] concluded that the release letter was fictitious and made under army pressure. The investigation established that the Ikhwan and the army officials tortured the victim to death.
- On 27 June 1999, the army authorities of the Chatoosa camp in the Chatoosa forests recovered the body of the victim. It was brought to the High School, Chatoosa by the army and then taken into possession by the police.
- Legal formalities were carried out. Post-mortem: "multiple marks of violence leads to hypertension, kidney failure and lastly death". Further, two gun shot wounds were found.
- Police concluded that it was murder by Army authorities and the Ikhwan – but no specific name of army authority/officer.
- Ikhwan Khursheed was to be handed over by in-charge camp Chatoosa – to Police Station Panzulla and in-charge Camp Chatoosa was to hand over the original handing/taking over receipt.

The evidence in this case is strong and has obviously led the police to carry out investigations though it seems the Commanding Officer in this case has not been implicated. Further, it appears the case has stalled at the sanction for prosecution level.

Case No. 109

Victim Details

Ghulam Mohammad Lone [Extra-judicial killing]
 Age: 46 years
 Occupation: Forest Range Officer at Kangan
 Son of: Ghulam Rasool Lone
 Resident of: Kulmulla, Akhal Kangan Ganderbal

Alleged Perpetrators

1. Nazir Ahmad Lone, alias Nazir Gurra,

Government Gunman [Ikhwan]

2. Farooq Ahmad Beigh, Government Gunman [Ikhwan]

Case Information

On 23 June 1999, Nazir Ahmad Lone, son of Ali Mohammad Lone, alias Nazir Gurra an infamous Ikhwan of the area came to the victim's house at 10 pm and took Ghulam Mohammad Lone with him. At about 1 am in the night the family heard gun shots. The family didn't expect Nazir Gurra to kill him considering the fact that he was their neighbour. In the morning, the family and the neighbours found Ghulam Mohammad in a pool of blood on a road half kilometre away from their home.

Nazir Gurra was initially associated with militants and in 1995 joined Ikhwan. He along with his other associates used to smuggle timber. They came many times to the victim who was working as a ranger in the forest department and asked for timber. Due to fear, he used to give them timber. On this fateful night Nazir Gurra along with another Ikhwan Farooq Ahmad Beigh came to their house and asked Ghulam Mohammad for timber. This time he refused and they killed him.

Also, the victim had lodged an FIR in the local police station in which he had complained against the looting of forests without naming any particular person. Someone from the police informed Nazir Gurra about this complaint and he in turn killed Ghulam Mohammad fearing that he might name him somewhere in future.

After 6 days, Abdul Qayoom Lone, son of the victim, went to Nazir Gurra and asked him about the reasons of killing his father. In turn Nazir Gurra threatened him of dire consequences and after few days also went to their house to kill Qayoom. Qayoom was able to escape only after his family and neighbours screamed. After that Qayoom went into hiding for about three years up to 2002.

In the meantime, after the incident an FIR was lodged in Police station Kangan – FIR no. 33/1999. It was filed by brother of the deceased Abdul Ahad Lone. Instead of carrying out any investigation, the police filed a closure report dated 20 March 2001 without informing Abdul Ahad Lone about it.

Then in 2002, Abdul Qayoom gave an application to Superintendent of Police [SP] Ganderbal against Nazir Gurra for the reopening of the FIR. After that some people in the garb of human rights activists came to their home and asked the family not to pursue case against Nazir Gurra. They even threatened them of dire consequences. The four people were not speaking the local language. Fearing all this harassment the family didn't follow the case thereafter.

The son of the victim, Abdul Qayoom Lone, gave the above statement to the IPTK.

The witness statement is credible and provides evidence of the killing of the victim. Further, a writ petition, OWP 1313/2015 was filed before the High Court regarding the investigations in the case. Notice was issued by the High Court on 27 August 2015. The evidence available mandates further investigations.

Case No. 110

Victim Details

1. Nazir Ahmad Gilkar [Torture and Extra-Judicial Killing (Custodial Killing)]
Son of: Abdul Salam Gilkar
Address: Bahaudin Sahib, Nowhatta, Srinagar
2. Javed Ahmad Shah [Torture and Extra-Judicial Killing (Custodial Killing)]
Son of: Ghulam Mohammad Shah
Resident of: Arampora, Botakadal, Srinagar.
3. Ghulam Rasool Matoo [Torture and Extra-Judicial Killing (Custodial Killing)]
Son of: Ghulam Ahmad Matoo
Address: Arampora, Nawakadal, Srinagar.

Alleged Perpetrators

1. Abdul Rashid Khan [Operational name: Rashid Billa], Station House Officer [SHO], Soura Police Station [later promoted as SDPO (Sub-Divisional Police Officer), Soura], Jammu and Kashmir Police
2. Tariq Ahmad Guroo, Special Police Officer [SPO], Jammu and Kashmir Police [Deceased]
3. Assistant Sub-Inspector [ASI], Mohammad Rafiq Chachoo, Jammu and Kashmir Police
4. Selection Grade Constable Mohammad Shafi Mufti, Jammu and Kashmir Police
5. Constable Ajaz-ud-Din Sheikh, Jammu and Kashmir Police
6. Constable Zakir Hussain Khan, Jammu and Kashmir Police
7. Constable Mushtaq Ahmad Lone, Jammu and Kashmir Police

Case Information

On 23 June 1999, in the evening hours, Nazir Ahmad Gilkar, Javed Ahmad Shah and Ghulam Rasool Mattoo were riding a scooter [no. DL-33-7771] following a wedding. They had a large quantity of money with them. They were stopped outside the Soura Police Station by the personnel of the Special Operations Group [SOG] of the Jammu and Kashmir Police. After frisking and checking their identity cards all three of them were dragged into the Soura Police Station and were detained there along with their scooter. Inside the police station, SHO Abdul Rashid Khan, along with the other alleged perpetrators tortured them ruthlessly, and later killed all of them.

The family of the victim states that when the victims did not return home from the marriage party, they went out to search them but could not find them. They then approached the Soura Police Station. But the police officials told them that they had no information on the victims and that they had not taken any person into custody. The families of the victims went to search in all the military camps but nothing was traced out.

On 24 June 1999, two dead bodies were reported to the Sheeri Police Station by N.S.Mehta, Assistant Commandant, 135th Battalion Border Security Force [BSF]. On 27 June 1999, another dead body was received from the Dal lake.

Following a newspaper report in a local daily which stated that two unidentified bodies were found and buried in the Kichama graveyard, the families of the victims went there and identified the bodies of Ghulam Rasool Mattoo and Javed Ahmad Shah, on the basis of clothes and other articles. After some more days, there was other news about a body being found in the Dal Lake which was later on picked up by the police and subsequently buried in the premises of the Zakoora Police Station. The family of Nazir Ahmad Gilkar went there and identified the body. Later on, all the bodies were exhumed pursuant to the orders of district magistrates and were buried in their native graveyards.

According to the family of Nazir Ahmad Gilkar, he was tortured to death on the same night of his arrest and his body was thrown into Dal Lake. The other two victims, who were eye-witnesses to the killing of Nazir Ahmad Gilkar, were subsequently shot dead and buried in a graveyard at Kichama, Baramulla.

When the bodies of Javed Ahmad Shah and Ghulam Rasool Mattoo were exhumed from the Kichama graveyard, the Sheeri Police Station filed first information report [FIR] no.31/1999 u/s 364 [Kidnapping/Abducting to murder], 302 [Murder], 201 [Causing disappearance of evidence/giving false information], 120-B [Criminal Conspiracy] Ranbir Penal Code, 1989 and the Arms Act, 1959. When the body of Nazir Ahmad Gilkar was recovered from the Dal Lake, the Nigeen Police Station registered FIR no. 80/1999 u/s 302 [Murder], 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989⁸⁵. Both the cases were investigated by the Crime Branch, Srinagar. On the orders of the High Court, Jammu and Kashmir, the separate

charge sheets for the two FIR's were combined for a joint trial⁸⁶. By communication dated 30 November 2013 from the Jammu and Kashmir Police a copy of the chargesheet and FIR in 80/1999 was provided. A separate RTI was filed regarding all FIRs against State forces in Jammu and Kashmir. By communication dated 25 December 2013 from Jammu and Kashmir police information was provided that in FIR 31/1999 a chargesheet was filed on 7 September 2001. By communication dated 22 April 2014 from the Jammu and Kashmir Police information was provided that in FIR 31/1999 the case was closed as challaned. But, no documents were provided.

On 25 February 2000, the High Court of Jammu and Kashmir, Jammu, on being approached by the alleged perpetrators, transferred the trial from Srinagar to Jammu. Abdul Rashid Khan and Mohammad Rafiq Chachoo were proceeded against u/s 512 [Record of evidence in absence of accused] Criminal Procedure Code, 1989 [CrPC]. Abdul Rashid Khan was absconding while Mohammad Rafiq Chachoo was undergoing psychiatric treatment. The alleged perpetrators were granted bail during the course of the trial. The 1st Additional Sessions Judge, Jammu acquitted the alleged perpetrators on 2 February 2008. Subsequently, following an RTI, by communication dated 24 June 2014, information was provided that alleged perpetrator no.1 was also acquitted by the lower court but there was an appeal against this acquittal.

The families of the victims filed a petition [Original Writ Petition (OWP) 902/2008⁸⁷] before the High Court of Jammu and Kashmir, Srinagar against the non-filing of an appeal by the Government of Jammu and Kashmir against the acquittal. This remains pending.

Original Writ Petition's [OWP] 588/1999⁸⁸ and 68/2002⁸⁹ were filed before the High Court, Srinagar to provide security to the prosecution witnesses, travelling and boarding expenses, and a translator for the case so that the evidence could be correctly translated. Pursuant to an order passed in OWP 588/1999, security was provided. On 23 September 2002, in OWP 68/2002 the High Court dismissed the petition without further relief on the other prayers. A Letter Patent Appeal [LPA no.171/2002]⁹⁰ was filed against this order. The LPA was dismissed on 9 April 2003 to approach the trial court for relief.

85 Information on both FIR's were sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013 for both FIRs. Further information on FIR no. 31/1999 was sought through RTI dated 14 November 2014.

86 RTI filed on 18 December 2012 to Jammu and Kashmir Police regarding custodial killings in Jammu and Kashmir between 1989 and 2012. By communication dated 4 January 2013 information was provided that the case was chargesheeted on 6 December 1999.

87 Information on the petition number was sought through RTI on 4 April 2014.

88 Information on the petition number was sought through RTI on 4 April 2014.

89 Information on the petition number was sought through RTI on 16 February 2012. Information was provided.

90 Information on the petition number was sought through RTI on 16 February 2012. Information was provided.

The incident was widely reported by the media creating pressure on the Government of Jammu and Kashmir to order an inquiry⁹¹.

The document that may be analyzed in the instant case is the trial court acquittal of 2 February 2008. After considering the procedural history of the case, the court proceeded to summarize the evidence. Relevant witnesses and their evidence is summarized below:

- Witness Farooq Ahmad, brother of Nazir Ahmad Gilkar, testified that he had joined his brother at the wedding function on 23 June 1999. Nazir Ahmad Gilkar exchanged his slippers with him. The victims left on a scooter that belonged to Javed Ahmad Shah. They went to Buspora to see off the bride but did not return. As checking was on near the Soura Police Station it was thought that the victims may have been arrested by the police. The witness, along with others including Parveen, Shagufta, the wife of Javed Ahmad Shah and Shagufta, the sister of Javed Ahmad Shah, went to the Soura Police Station before 10:00 pm. The witness asked the police guard at the main gate if the victims along with the scooter had been detained and he asked to meet with the SHO of the police station. He was informed that the SHO was not at the police station. Shagufta, wife of Javed Ahmad Shah, who had accompanied the witness to the police station, saw the scooter parked in the police station. They brought this to the attention of the police guard who asked them to return the next morning. The witness along with Iftar Ahmad visited the Soura Police station on the next morning at 7:30 am. Once again, the police guard informed them that there was no one in the police station. At this point, the witness did not see the scooter. Subsequently, the clothes of Nazir Ahmad Gilkar were identified by Mushtaq Ahmad in the Zakoora Police Station. During the cross-examination, the witness stated that the Soura Police Station had one main gate and another interior gate. He talked to the police guard from the main gate. One could see inside the police station. It was wrong to state that the clothes of Nazir Ahmad Gilkar were brought out from a box. They were hanging from a tree. Prosecution witnesses Ashfaq Ahmad Wani, Mushtaq Ahmad Khan and Mushtaq Bhat also accompanied him to the police station. He did not see the scooter, but "his attention was drawn to this fact by Mst. Shagufta". The scooter was lying near the Central Reserve Police Force [CRPF] post. The inner gate of the police station had no lights but there was a light outside the interior gate and it had its effect on the verandah.
- Witness Ashfaq Ahmad Wani, nephew of Nazir Ahmad Gilkar, identified the body of the victim on 1 July 1999 at the Zakoora Police Station. He enquired from the Munshi at the police station about the body and he was informed that the clothes of the victim were hanging from a tree. The witness recognized the clothes.
- Witness Shagufta, wife of Javed Ahmad Shah, testified that her husband and the other victims left on a scooter following the wedding at about 8:30 pm. The witness was informed that there was checking taking place near the Soura Police Station. At about 9:45 pm, along with Farooq Jeelani and others, went to the Soura Police Station. Farooq Jeelani talked the police guard at the main gate and in the meanwhile the others joined him. The witness saw the scooter parked in the police station through a grill. She believed her husband was in the police station. The police guard informed them that the SHO was not in the police station and that they should return on the next day. During the cross-examination, the witness stated that the Soura Police Station had an iron gate. The cross-examination could not be completed in the court time and later the accused had no option to further examine the witness.
- Witness Reyaz Ahmad, posted as a guard on the second gate of the Soura Police Station on 23 June 1999, testified that he knew the accused. The witness denied that any scooter or person was brought into the police station. The witness was declared hostile by the prosecution as he contradicted his Section 161 [Examination of witnesses by police] CrPC statement. His duty was upto 9:00 pm only. On examination by the defence counsel the witness stated that the relations of the deceased victims did not visit him and enquire about the victims. He stated that the police station has two gates and the main gate was manned by the CRPF. No one was brought to the police station from 6:00 pm to 9:00 pm on 23 June 1999. There is a 50 foot distance between the two gates of the police station and nothing can be visible of the compound from the entry gate.
- Witness Bilal Ahmad testified that he knew the deceased victims. He joined the wedding celebrations on 23 June 1999 and went in a car to see off the bride. The victims, riding on their scooter, were checked by the Soura Police Station. The victims did not return and their families started searching for them. He was informed by the families of the victims that the victims' scooter was lying in the Soura Police Station. But, on the following, the

91 Greater Kashmir, <http://www.greaterkashmir.com/news/2009/Feb/15/fugitive-rashid-billa-in-valley-police-turn-blind-eye-43.asp>, 15 February 2009.

victims nor their scooter was found at the police station. In cross-examination, the witness testified that the Soura Police Station has a big gate. The scooter was following his car till the Sabzi Mandi.

- Witness Shagufta, the sister of Javed Ahmad Shah and cousin of Ghulam Rasool Mattoo, testified that the deceased victims had gone on a scooter to see off the bride following the wedding on 23 June 1999 at about 6:00/7:00 pm. They did not return. She along with other visited the Soura Police Station. The witness testified that she saw the scooter at the police station. The person at the gate asked them to return the following day as there was no officer at the police station. The gatekeeper also told them that if they do not leave the police station he would shoot them. The witness was accompanied by Farooq, Shagufta and others. The witness did not visit the police station on the following day. But, she was informed that neither the scooter nor the victims were found in the police station. During cross-examination, the witness stated that she does not know the registration number of the scooter and that it had no "specific identity". She could not remember how she had recognized the scooter at the police station.
- Witness Peer Noor-ul-Haq, a stamp vendor, testified that he was abducted by SDPO Abdul Rashid Khan and ASI Mohammad Rafiq Chachoo [in the judgment he is stated to have referred to him as "ASI Cheechu"] of the Soura Police Station a few days prior to 23 June 1999. He was torture for two / three days. On 23 June 1999, two persons were brought to his room. They informed him that they had been arrested when they were returning after seeing off their sister-in-law and the police had seized their money and scooter. The witness is then stated to have testified that "the cries were for about one and a half hour". This appears to be a reference to the torture of one or more of the victims. The witness testified that he did not find these persons the next morning. During cross-examination, the witness testified that the height of the main gate is 10 feet and there is a five / six foot grill.
- Witness Parveen testified that she along with Shagufta, Farooq Ahmad and others went to the Soura Police Station. No date is mentioned but there is a reference in the cross-examination to the bride being seen off by the victims on a scooter. Therefore presumably the police station visit took place on 23 June 1999, as referred to by other witnesses. The power was off at the police station. The gatekeeper was asked to enquire about the deceased victims. They were asked to return the following day as there was no officer in the police station. The

gatekeeper threatened them with a gun. The wife of Javed Ahmad Shah recognized the scooter in the police station. No damage appears to have been done to her testimony in cross-examination.

- Witness Mukhteyar Ahmad Bazaz testified that he along with others had gone to Buspora to see off his cousin sister. On his return he saw police personnel checking the scooter, which was being ridden by the deceased victims, near the Soura Police Station. The victims did not return. But, on cross-examination the witness stated that he did not see the scooter of the victims being checked by the police.

Following the above evidence [which included other witnesses that turned hostile], the accused did not produce any evidence in defence.

Before considering the analysis of the trial court, a few preliminary comments may be made:

- There exists a potentially minor discrepancy in the testimony of Shagufta, wife of Javed Ahmad Shah, as she refers to Farooq Ahmad as Farooq Jeelani.
- The testimony of witness Parveen on the lack of power at the Soura Police Station may have an impact on the witnesses testimony regarding the sighting of the scooter and Farooq Ahmad's testimony that there was a light outside the interior gate. But, with the evidence presently on record, it could be argued that this testimony by itself does not discredit the other witnesses.

The trial court, while pointing out contradictions between the witness testimony and on occasion their past statements to the police, did not find strong evidence of even the sighting of the scooter at the Soura Police Station.

Further, no link between the crimes and the alleged perpetrators was found. The prosecution was criticized for not building a strong case. The alleged perpetrators were therefore acquitted.

The evidence in total does strongly suggest that the victims were stopped by personnel of the Soura Police Station, the scooter was sighted at the police station, and SDPO Abdul Rashid Khan and ASI Mohammad Rafiq Chachoo at least appear to be in operation during the incident at the Soura Police Station.

Further, the killing of all three victims is beyond doubt. But, admittedly, the evidence as it is does not indict any of the alleged perpetrators.

Serious enquiries would need to be made on the fairness of the trial and whether the investigation and prosecution of this case, considering it was being

conducted against police officials, was done in a rigorous and professional manner.

From the shifting of the trial to Jammu, to the various witnesses, including police personnel, who turned hostile it is clear that the alleged perpetrators were assisted, and continue to be assisted, in evading justice.

Case No. 111

Victim Details

[Massacre/Extra-judicial killing]

Azam Khan

Nisar Khan
Son of: Azam Khan

Yasir Khan
Son of: Azam Khan

Mushtaq Khan
Son of: Azam Khan

Shaheena Khan
Daughter of: Azam Khan
Javaid Khan
Brother-in-law: Yasir Khan

Motiya Begam
Wife of: Akram Khan

Firdous Khan
Daughter of: Akram Khan

Ruksana Khan
Daughter of: Akram Khan

Rashid Khan
Son of: Ruksana Khan

Washid Khan
Son of: Ruksana Khan

Hameeda Begum
Wife of: Mushtaq Khan

Bashir Ahmad [a neighbor]

Liaqat Khan
Cousin of: Azam Khan

Nahida Khan
Daughter of: Mushtaq Khan

All residents of: Mohra-Bachai, Surankote, Poonch District

Alleged Perpetrators

1. Superintendent of Police [SP], J.P Singh, Jammu and Kashmir Police
2. Havaladar Mushtaq Shah, Jammu and Kashmir Police
3. Special Police Officer [SPO] Yasir [deceased], Jammu and Kashmir Police
4. Special Police Officer [SPO] Gani [deceased], Jammu and Kashmir Police
5. Special Police Officer [SPO] "Chavhan" [Codename], Jammu and Kashmir Police
6. Personnel of 9 Paracommandoes, Indian army, Bafliaz camp

Case Information

29 June 1999.

Read Chapter 2: Theatres' of Violence-Part D relating to the massacre at Mohra-Bachai.

Case No. 112

Victim Details

Mohammad Sarwar Khan [Abduction and Extra-Judicial Killing (Custodial Killing)]
Son of: Ali Asgar Khan
Resident of: Qasba Haveli, Poonch District

Alleged Perpetrators

1. Subedar Surjeet Singh, Company Havaladar Major [CHM] 1 Rashtriya Rifles [RR] / 3rd Sikh Battalion, Army

Case Information

On 13 September 1999, Mohammad Sarwar Khan was picked up by Subedar Surjeet Singh, killed in custody and then buried.

First Information Report [FIR] no.91/1999 u/s 2/3 E & Imco was registered at the Poonch Police Station⁹². Further information sought through RTI dated 14 November 2014.

As per the Senior Superintendent of Police [SSP], Poonch, investigations established that Mohammad Sarwar Khan was a border crosser and was killed in an encounter at "Rangwar Dhok Sawaian" on 1 November 1999. The case was closed by declaring the perpetrators as untraced.

92 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided. Further information sought through RTI on 15 October 2013.

FIR no.133/2000 u/s 320 [Grievous hurt], 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was registered at the Poonch Police Station⁹³. Further information sought through RTI dated 14 November 2014.

As per the SSP, Poonch, the complainant could not produce any witnesses to support the case and identify the culprits. The case was closed by declaring the perpetrators as untraced on 10 October 2001.

The family of the Mohammad Sarwar Khan approached the State Human Rights Commission [SHRC] on 5 September 2007 and the final decision was issued on 22 December 2008.

SSP, Poonch submitted that Mohammad Sarwar Khan was a border crosser and source of the army and died in an encounter at “Ranawar Dhok Sawajian”.

Further, that the body of Mohammad Sarwar Khan was buried there. Further, ex-gratia government relief had been paid to the family of Mohammad Sarwar Khan.

The SHRC final decision recommended that ex-gratia government relief be awarded to the family of the victim.

In addition to the submissions of the SSP, Poonch, the SHRC considered the medical report of the Sub-District Hospital, Mandi. The report stated that the body of Mohammad Sarwar Khan was exhumed from the cave of the Rangwara grave-yard on 28 July 2000.

Based on the above medical report, the SHRC concluded that the fact that the body of Mohammad Sarwar Khan was exhumed from the “vicinity of Sub-District Hospital Mandi” suggests that the submissions of Station House Officer [SHO], Poonch that the victim had died on the border during cross-firing is contradicted.

This reasoning of the SHRC is unclear as the SSP Poonch also suggested that the encounter had taken place at “Ranawar Dhok Sawajian” or “Rangwar Dhok Sawaian”. Further, the SHRC decision itself, while considering relief considered the possibility that Mohammad Sarwar Khan may have been killed in an encounter.

Further, the SHRC decision does not indict Subedar Surjeet Singh, though it could be argued that the decision does raise doubts as to the legality of the death of Mohammad Sarwar Khan.

Finally, while the submissions of SSP, Poonch before the SHRC state that the victim had received ex-gratia

government relief, on record are a 25 May 2009 document where the Jammu and Kashmir Home Department sanctioned relief for the family of Mohammad Sarwar Khan, and a letter dated 24 June 2009 letter from the Deputy Commissioner [DC], Poonch stating the same.

Further, as per information available, as on 6 September 2011 the ex-gratia government relief was yet to be received by the family of Mohammad Sarwar Khan.

No information exists on what basis the Jammu and Kashmir Police closed the case by declaring the perpetrators as untraced except that the complaint could not identify the perpetrators.

The responsibility of investigations is with the Jammu and Kashmir Police and not with the complainant.

Further, the closure report would, by law, have to be judicially scrutinized. Whether this was actually done would need to be ascertained.

Finally, considering that the victim was said to have been working with the army when he was killed, the burden to explain the circumstances of his death would be on the army.

The Ministry of Defence seems to have cared very little about the SHRC order, the Jammu and Kashmir Police investigations or in instituting a process for delivering justice.

The available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 113

Victim Details

Mohammad Sultan Bhat [Extra-Judicial Killing]
Age: 28
Occupation: Government employee [Notified Area Committee]
Son of: Muhammad Akbar Bhat
Spouse: Rafiq
Resident of: Ganjpora, Batvin, Ganderbal District

Alleged Perpetrators

⁹³ Information on this FIR was sought through RTI on 2 July 2012. No information was provided. Further information sought through RTI on 15 October 2013.

1. Ghulam Mohammad Kaloo [Operational names: Ghulam Mohammad Sheikh / Mama Ikhwani], Government Gunman [Ikhwan]
2. Major S. Sehgal, Adjutant, In-charge of Camp, 5 Rashtriya Rifles [RR], Army, Camp Doderhama, Ganderbal
3. Lance Naik [Lance Corporal] Vikram Singh, 5 Rashtriya Rifles [RR], Army, Camp Doderhama, Ganderbal
4. Sepoy Vinod Kumar, 5 Rashtriya Rifles [RR], Army, Camp Doderhama, Ganderbal

Case Information

The family of Mohammad Sultan Bhat states that on the intervening night of 19 and 20 September 1999, at about 10:00 pm, the victim was sleeping in the room when there was a loud banging on the door of the house. The family identified the person as Ghulam Mohammad Kaloo accompanied by army personnel and other Ikhwan. The victim was then taken away.

The next day there was an election in the area and the family went to the polling booth to ask about the victim but they were not told anything. In fact the army did not accept that they had arrested the victim the day before. The family was told by the head of the village [Mukhdam, namely Muhammad Maqbool Lone] that the wife of the victim, Rafiqah was in love with Ghulam Mohammad Kaloo and for that reason the victim was abducted.

On the next morning, the family of the victim went to the Shadipora Police Post at about 9:00 am and reported that matter about the victim's abduction but the police only gave assurances to them, according to the family of the victim. The family states that they kept on searching for him for the next ten days but the family found no clue.

On 30 September 1999, the family went to the Ganderbal Police Station and asked about the whereabouts of the victim. The police asked them about the identification mark of the victim and the family told them that the victim had a mark on his right arm. The police then told the family that they had found a body with the same identification mark at Reshipora, Ganderbal. Then the family went to Reshipora and enquired about the recent burials in the graveyard in the area. The family later sought permission from the District Administration Office and on the next day the body of the victim was exhumed.

The family states that the victim was a militant of Al-Jehad in early 1990's and he was picked up from his house and detained for three years and after his release he never got involved in any militant activity.

The family of Mohammad Sultan Bhat gave a statement to the IPTK on 22 February 2012.

First Information Report [FIR] no. 158/1999 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition / possession / manufacture / sale of prohibited arms/ammunition] / 27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 was lodged at the Ganderbal Police Station on 20 September 1999⁹⁴.

This was registered by Major S. Sehgal of 5 RR, in-charge Doderhama, Ganderbal Army camp and stated that the victim was a militant and killed in cross firing during an operation at Dilari village, Manasbal. The body of the victim was handed over to the Ganderbal Police Station.

The family of the victim filed a complaint before the State Human Rights Commission [SHRC] on 7 July 2000. The final decision of the SHRC was delivered on 1 October 2007. Ex-gratia government relief of Rs.1,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders] were recommended. The SHRC also recommended that the FIR lodged in the case be reopened and investigated by the Crime Branch. On the non-implementation of the SHRC recommendations, and the opinion of the District Level Screening-cum-Coordination Committee [DLSCC] that case was not covered under the ex-gratia government relief rules, the family of the victim filed an application before the SHRC on 29 January 2009. On 25 March 2009 the SHRC stated that it had no power to get its recommendatory judgments implemented.

The family of the victim filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 370/2009] on non-implementation of the SHRC recommendations.⁹⁵ The State of Jammu and Kashmir and the Jammu and Kashmir Police authorities filed their objections. It was stated that the issues of relief/compensation did not pertain to them.

Further, on the issue of reopening of investigations, it was stated that the investigations were still ongoing. It was also stated that the investigations in the case had been reopened and were being investigated by the "respondent organization" [presumably the Crime Branch which was a party to the proceedings]. The most recent order of the High Court on record is of March 2012 where the High Court states that the investigations suggest the involvement of the alleged perpetrators in the crime, and directed the Chief Secretary, Civil Secretariat, State of Jammu and

⁹⁴ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. By communication dated 2 May 2014 information was provided that the case was under investigation and lying with Crime Branch, Kashmir. Further information sought through RTI dated 14 November 2014. By communication dated 18 December 2014 information was provided that the case was under investigation and lying with Crime Branch, Kashmir.

⁹⁵ Information on the petition number was sought through RTI on 16 February 2012. Information was provided.

Kashmir, and the Director General of Police [DGP], Jammu and Kashmir, to intervene and allow the production of the alleged perpetrators before the investigators.

The SHRC final decision on 1 October 2007, along with the proceedings in the High Court, may be analysed as indictments against the alleged perpetrators.

The Jammu and Kashmir Police reports before the SHRC stated that an encounter took place on 20 September 1999, between personnel of the 5 RR and militants. One militant, the victim, was killed in the exchange of fire. The SHRC heard witness testimony. Witness Haji Mohammad Maqbool Lone, Lambardar [Numberdar, de facto revenue authority in the village], stated that the victim had been lifted by the army. But, this witness, based on the summary in the SHRC decision, appears to provide hearsay evidence only. Two other witnesses, Chowkidar [Village guard] Ghulam Rasool Lone and Aziz Bhat stated that the victim was a surrendered militant, and his wife had “illicit relations” with an Ikhwana and that was the cause of his death. The SHRC based on the record before it reached the conclusion that the victim was a surrendered militant and at the time of his death an employee in the Town Area Committee, Ganderbal. The SHRC also found that the victim’s wife did have “some affairs” with Ghulam Mohammad Kaloo, who then, with the “connivance of the Security Forces”, kidnapped and killed the victim. The SHRC disbelieved the version of events regarding an encounter with militants as stated by Senior Superintendent of Police [SSP] Crime and Additional Director General of Police [ADGP], Criminal Investigation Department [CID] as it stated that if an encounter had taken place it was likely that there would have been some injury to the security forces as well. Further, the SHRC also pointed out that the dead body of the victim should have been handed over to the police.

The numerous compliance reports filed by the Jammu and Kashmir Police before the High Court may also be considered for the purposes of analysis. Compliance report dated 3 March 2010 stated that the body of the victim was exhumed on 30 September 1999 by the orders of the District Magistrate, Srinagar, in the presence of the Tehsildar [Executive Magistrate 1st Class], Ganderbal and others. Further, that the case was closed by declaring the perpetrators as untraced on 28 December 1999, but reopened under the Crime Branch on 25 April 2005. This compliance report also confirms that the victim was a surrendered, and not an active, militant. Compliance report 2 June 2010 stated that the Crime Branch visited the 5 RR Camp at Doderhama, Ganderbal and met with Commanding Officers Colonel A.K. Botail and Lieutenant Colonel Joshi. On seeking information with regard to the operation that formed the subject matter of the FIR, the Crime Branch was informed that relevant records for the period were not available as the operation had

taken place many years back. Nonetheless, the Crime Branch was informed that the operation was an ambush operation. Compliance report of 2 July 2010 confirmed the involvement of Ghulam Mohammad Kaloo in the abduction and killing of the victim. This was based on eye-witness testimony recorded during the investigations. But, the report stated that despite strenuous efforts Ghulam Mohammad Kaloo was yet to be arrested.

Further, based on the investigations conducted, the offences in the original FIR were omitted and sections 364 [Kidnapping/Abducting to murder], 302 [Murder], 120-B [Criminal Conspiracy] Ranbir Penal Code, 1989 [RPC] were considered proved against Ghulam Mohammad Kaloo and unidentified army personnel of the 5 RR, Doderhama, Ganderbal. In its subsequent, undated report, the Crime Branch stated that it had been informed by the 5 RR Camp, Ganderbal, that Ghulam Mohammad Kaloo was not associated with them. Further, that the Inspector General of Police [IGP], Crime had written to the Commandant, 31 Sub Area, to cause the appearance of Major S. Sehgal, Lance Naik Vikram Singh and Constable Vinod Kumar before the Crime Branch at the earliest. In a subsequent undated status report [but presumably of April 2011], the Crime Branch stated that the 5 RR unit had been “enthusiastically instrumental in getting the case closed as untraced by Police Station Ganderbal” in the initial proceedings of the case.

Another status report of the Crime Branch, undated once again but presumably around September 2011, confirms that Major S. Sehgal, Lance Naik Vikram Singh and Constable Vinod Kumar were main accused in this case along with Ghulam Mohammad Kaloo.

Also on record is the order of the Chief Judicial Magistrate [CJM], Srinagar of 31 May 2011 where the CJM stated that there was enough material on record to disclose the involvement of Major S. Sehgal, Lance Naik Vikram Singh and Constable [Sepoy] Vinod Kumar in the crime and a notice was served on the Commanding Officer of the alleged perpetrators to produce the alleged perpetrators before the investigators. The armed forces therefore appear to be not cooperating with the investigations in an attempt to evade justice and shield the alleged perpetrators.

The final point to be considered would be the status report filed before the High Court by the Jammu and Kashmir Home Department [the date of this status report is unclear but it would appear to be around September 2010].

While on one hand the Crime Branch appears to have found the victim to have been a surrendered militant only, the Home Department, in the context of relief/compensation, finds the victim to have been actively involved in militancy. This contradiction is clearly unfortunate and serves as an example of the

various fronts that the family of the victim in the instant case have had to struggle against.

The above documents on record therefore clearly indict the alleged perpetrators in the crime of abduction and killing of the victim. But, despite this and the passage of 13 years, the perpetrators have evaded justice. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

A final note on information present online which states that the investigating officer in this case informed the High Court that the Crime Branch has received communication from the Army authorities stating that Major Adjutant R Nunia and Major Sunny Kurian have shot dead Bhat.

It is clear that further investigations will reveal the true accused behind this crime.

Case No. 114

Victim Details

Mohammad Ramzan Malla [Torture, Extra-judicial killing]

Age: 32 years

Occupation: Shopkeeper [Affiliated with JKLF (1992-1995)]

Son of: Asadullah Malla

Resident of: Dodhbugh, Wagoora, Baramulla

Alleged Perpetrators

1. Deepak, Major, 29 Rashtriya Rifles [RR], Shumlaran camp

Case Information

The victim was earlier affiliated with JKLF; he surrendered on 6 December 1995 before the 29 RR. After that he was ordered to appear in Shumlaran 29RR camp on every Sunday. After he surrendered he started his shop of provision store at Dodhbugh market. He was living his normal life and was appearing to the camp till 1999.

On 11 November 1999, Major Deepak [officer in command] along with his personnel of Shumlaran camp picked the victim from his shop at 11:00 am. The other shopkeepers saw him been picked up by the above said officer. They approached the family and informed them that the victim was picked up. There in the camp he was kept till 14 November 1999. On 14 November 1999, the three brothers of the victim namely Abdul Rasheed Malla, Ghulam Hassan Malla, Abdul Aziz Malla, went to the camp to see the victim. There in the camp the victim was handed over to the

three brothers, but in a very bad condition. The trio took the victim straight away to the Baramulla Hospital. From there he was referred to SMHS Hospital in Srinagar on the same day. At about 10:05 pm he died on the same day. As per the medical reports the victim was made to drink petrol and was brutally tortured which caused his death. On 15 November 1999, the dead body was handed over to family and was referred to Baramulla Hospital again for post-mortem. After post-mortem the family took the dead body home for funeral, but police went along with the dead body. On the way taking the dead body to home, army stopped the ambulance carrying dead body at Rampura. Army was not allowing the body to be taken home. It was the army of Shumlaran camp. The ambulance was stopped there for 2-3 hours. Then local police who were along managed to get the body released. Then the family did the funeral.

After the killing Major Deepak came to the house to offer money. But the family refused to accept money. In 2007, the son of the victim namely Tanveer Ahmad Malla filed the case in State Human Rights Commission [SHRC]. The judgment was in favor of the family. The family has received ex-gratia of Rs. 1 lakh. But Statutory Rules and Orders [SRO 43] [compassionate employment] has not been given yet. Now the case is before Deputy Commissioner, Baramulla.

The son of the victim, Tanveer Ahmad Malla, gave the above statement to the IPTK on 27 May 2015.

On file is a copy of the SHRC decision dated 5 March 2012. Based on police report before the SHRC, it was found that the victim was picked up by the army and tortured to death in custody. For the implementation of this SHRC decision, and for the registration of FIR, a writ petition, OWP 1327/2015, was filed before the Jammu and Kashmir High Court. Notice was issued by the High Court on 7 August 2015.

In addition, the witness statement is clear, further investigations are warranted as there are eye-witnesses to this incident whose evidence should be recorded.

Case No. 115

Victim Details

Abdul Rashid Bhat⁹⁶ [Extra-Judicial Killing (Fake encounter)]

Son of: Ghulam Mohammad Bhat, Raja

Resident of: Hanjoora, Chadoora, Budgam District

Alleged Perpetrators

⁹⁶ The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], and the Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA, on 6 September 2011, wrongly refer to the victim as Ghulam Rasool Bhat or a variation of the same.

1. Major Raghwan R. Singh, 5 Kumaon Regiment, Army, Camp Nagam
2. An unnamed Junior Commissioned Officer [JCO], Army

Case Information

On 14 January 2000 at 10:00 pm Abdul Rashid Bhat was killed in a fake encounter. In the FIR Abdul Rashid Bhat was claimed to be an Afghan national and a member of the Laskar-e-Toiba with a code name "Jehangir".

On the day of the incident Abdul Rashid Bhat had gone out to purchase a cow. He was arrested by the personnel of the Radar Camp and then handed over to the Nagam Camp. His body was handed over to the police and buried. Subsequently, it was exhumed. The body was identified by the mother of the victim, Raja, and Ghulam Rasool Bhat.

First Information Report [FIR] no.8/2000 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Chadoora Police Station on 15 January 2000. Information on this FIR was sought through RTI on 7 October 2011. Information was provided on 27 December 2011. It was stated that on 15 January 2000 Army 5 "Kumar" unit Nagam C/O APO 56 APO reported at Chadoora Police Station with a written application to the effect that one foreign militant had been killed in an encounter. FIR no. 8/2000 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] was registered and investigation taken up. The deceased was identified as Abdul Rashid Bhat, son of Ghulam Mohammad Bhat, resident of Hanjura, Budgam, who was an innocent person and Section 302 [Murder] Ranbir Penal Code, 1989 [RPC] was added to the case. The case was closed as chargesheeted and sanction for prosecution under AFSPA sought.

Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was received in October 2008 and was under consideration.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under AFSPA, stated on 6 September 2011 in relation to this case that sanction was awaited.

The Ministry of Defence, in response to a RTI on sanctions for prosecution, stated on 10 January 2012 in relation to this case that sanction was declined on 29 November 2011. Further, the Ministry of Defence

communication claims that "post-mortem report of the dead body reflected no injuries except a scratch on right wrist. The successive re-investigation of the case by police have recorded doctored statements of the witnesses much after the event to falsely implicate the office and Junior Commissioned Officer".

The family of the victim approached the SHRC and were granted relief.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir eight years to investigate and process the case for acquiring sanction for prosecution under AFSPA, which apparently helped the perpetrators in evading justice.

This case is another example of how the armed forces have carried out fake encounters and killed people unlawfully for rewards and other benefits.

Also noteworthy is the manner in which the Abdul Rashid Bhat after being killed in a fake encounter was claimed as a foreign militant and buried in an unmarked grave.

The Ministry of Defence position on the post-mortem report is untenable as the army itself claimed in the FIR that the victim was killed in an encounter.

This contradiction in of itself raises serious doubts on the position of the Ministry of Defence and the decline of sanction.

The claim of the Ministry of Defence that the Jammu and Kashmir Police recorded doctored statements long after the events to falsely implicate the army is not substantiated. While making such sweeping statements the Ministry of Defence has not only provided impunity to the alleged perpetrators but also expressed their unwillingness and hostility towards any police investigation.

Case No. 116

Victim Details

1. Mohammad Amin [Torture and Extra-Judicial Killing]
Son of: Habib-Ullah Malik
Resident of: Tendla, Doda District
2. Jaffar Hussain [Torture and Extra-Judicial Killing]
Son of: Ghulam Nabi Malik
Resident of: Tendla, Doda District
3. Abdul Majeed [Torture and Extra-Judicial Killing]
Son of: Ahad Wani
Resident of: Tendla, Doda District
4. Noor Mohammad [Torture]
Son of: Abdul Sattar
Resident of: Tendla, Doda District
5. Abdul Rashid [Torture]

6. Son of: Mohammad Ramzan
Resident of: Tendla, Doda District
Parvaiz Ahmad [Torture]
Son of: Faiz Ahmad
Resident of: Banatyas, Doda District
7. Anayat-Ullah [Torture]
Son of: Din Mohammad Naik
Resident of: Bhatyas, Doda District
8. Mohammad Abdullah [Torture]
Son of: Alaf Din
Resident of: Doloo, Doda District
9. Javed Iqbal [Torture]
Son of: Mohammad Shafi Wani
Resident of: Tendla, Doda District
10. Abdul Qayoom [Torture]
Son of: Alia Khanday
Resident of: Chillibala, Doda District
11. Mohammad Ramzan Malik [Torture]
Son of: Gulla Malik
Resident of: Tendla, Doda District
12. Liaqat Ali [Torture]
Son of: Munawar Din
Resident of: Tendla, Doda District
13. Arshad Hussain Malik [Torture]
Son of: Abdul Rashid Malik
Resident of: Dadian, Doda District
14. Javed Ahmad [Torture]
Son of: Mohammad Ramzan
Resident of: Dadian, Doda District
15. Farooq Ahmad [Torture]
Son of: Noor Mohammad
Resident of: Tendla, Doda District
16. Abdul Gani [Torture]
Son of: Ali Mohammad
Resident of: Dadian, Doda District

Alleged Perpetrators

1. D. N. Gupta, 5th Sikh Light Infantry [Sikh LI], Army
2. Major Ranjan Mahahan, 5th Sikh Light Infantry [Sikh LI], Army
3. Captain Vineet, 5th Sikh Light Infantry [Sikh LI], Army

Case Information

The victims were called to the army post Gandoh on 21 January 2000. They were severely tortured by the alleged perpetrators due to which Mohammad Amin, Jaffar Hussain and Abdul Majeed died. The others were injured.

First Information Report [FIR] no. 4/2000 u/s 302 [Murder], 307 [Attempt to murder], 109 [Abetment] Ranbir Penal Code, 1989 [RPC] was filed at the Gandoh Police Station on 22 January 2000⁹⁷. The State Human Rights Commission [SHRC] instituted the proceedings on 10 July 2000 and a final

decision was delivered on 2 June 2008, and Rs. 2,00,000 relief was recommended for families of Mohammad Amin, Jaffar Hussain and Abdul Majeed, and compassionate employment under SRO-43 [Statutory Rules and Orders]. It was noted that Rs. 1,00,000 had already been paid. Rs. 75,000 was recommended for each of the other victims.

The document on record that may be considered for the purpose of analysis is the SHRC decision of 2 June 2008. The SHRC arrived at its decision by considering the following:

- A magisterial enquiry was conducted by Sub-District Magistrate, Bhaderwah where witness statements were considered and it was concluded that the alleged perpetrators were responsible for the deaths and injuries caused to the victims. It was also noted that due to threats from the army the witnesses had submitted affidavits denying the charges.
- The report of Senior Superintendent of Police [SSP], Doda, dated 13 September 2000, was also considered. This report, without naming the alleged perpetrators, confirmed that the victims had been called to the army post Gandoh on 21 January 2000, were tortured and Mohammad Amin, Jaffar Hussain and Abdul Majeed died whereas the others sustained injuries. Further, that the post-mortem reports of the three dead victims indicated the cause of death being shock due to trauma. With regard to the injured persons, the medical officer had reported that the injuries had been caused by a blunt object.

Based on the above, the SHRC found in favor of the victims and recommended that the investigation in the FIR registered be finalized. It is unfortunate that the SHRC in this case took seven years to deliver its final decision.

It appears that in 2009, a chargesheet was filed and this remains sub-judice before the Sessions Court, Bhaderwah.

The available documents do not suggest that a Court-Martial was conducted in this case by the army. Therefore, the criminal case appears to remain pending to date – 14 years after the incident. It is likely that this case may have been sent for sanction for prosecution, but no record of the same exists.

Case No. 117

Victim Details

Mohammad Shafi Khan [Torture and Extra-Judicial Killing]
Brother of: Shams-ud-din Khan

⁹⁷ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided. Further information sought through RTI on 15 October 2013. By communication dated 28 March 2014 a copy of the FIR and final report were provided. Further information sought through RTI dated 14 November 2014.

Resident of: Mirwayan, Hayhama, Kupwara District

Alleged Perpetrators

1. Major Hardeep Johar, 8 JAT Regiment, Army
2. Lieutenant Kehar Singh, 8 JAT Regiment, Army

Case Information

On 27 January 2000 during the night Mohammad Shafi Khan was tortured during an army raid at his residence. The alleged perpetrators barged into the residence of the victim, Mohammad Shafi Khan, and interrogated him. After some time, Mohammad Shafi Khan's brother Shamsuddin Khan was asked to collect the victim. The victim had died due to severe torture.

First Information Report [FIR] no.17/2000 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Kupwara Police Station on 27 January 2000⁹⁸. The FIR states that the victim was picked by the 8 Jat at 4:00 a.m. of 27 January 2000 and beaten to death and handed over to the informant, the brother of the victim: Shamim Ahmad Khan. Both of the alleged perpetrators are named in the FIR. The alleged perpetrators asked the brother of the victim to send the victim out of the house. The victim was taken away at some distance and the alleged perpetrators interrogated him. They then asked the brother to collect the victim, who was dead.

The communication of 13 January 2012 by the police informs that the investigations in the case had been closed as chargesheeted and sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] had been sought. Subsequently, sanction for prosecution had been declined. But, the case was finally closed, after denial of sanction, on 12 June 2012.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that sanction had been declined vide order dated February, 2009.

The Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction had been declined.

By communication dated 9 July 2012, the Jammu and Kashmir Police provided a copy of the decline of sanction letter dated 23 February 2009. This letter states that the allegations were false and that both officers implicated were not present at the site of the incident. Lieutenant Kehar Singh was on leave, while

Major Hardeep Johar was manning the Payarpura Post.

No proof that Lieutenant Kehar Singh was actually on leave is provided. Further, the details of when and where he proceeded for his leave is not provided. Similarly, no proof that Major Hardeep Johar was present at this post during the time of the incident is provided. No alibi witnesses appear to have been examined.

Further, the Jammu and Kashmir Police investigations do not appear to have been contradicted in detail by the Ministry of Defence.

Further, the Jammu and Kashmir Government has not clarified what course it has taken after the sanction for prosecution was declined.

Case No. 118

Victim Details

[Massacre/Extra-judicial killing]

Asadullah War
Age: 70
Resident of Palapora, Pattan, Baramulla District

Javed Ahmad Bhat
Age: 19
Son of: Saleema and Mohammad Ismail
Resident of Pakipora, Pattan, Baramulla District

Tanveera
Daughter of: Mohammad Sultan War
Resident of Palapora, Pattan, Baramulla District

Fancy
Age: 9
Daughter of: Nazir Ahmad War
Resident of Palapora, Pattan, Baramulla District

Mushtaq Ahmad
Age: 8 months
Son of: Mohammad Sidiq War
Resident of Palapora, Pattan, Baramulla District

Alleged Perpetrators

1. Surjeet, Assistant Sub-Inspector [ASI], Jammu and Kashmir Police
2. Manna Grenade, Government Gunman

Case Information

The son of Asadullah War - Ghulam Nabi War [alias Aamir-ul-Islam] - was an active militant. He became a militant in 1991 or 1992. He went across to Pakistan

⁹⁸ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. On 13 January 2012, a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. By communication dated 24 December 2013 a copy of the FIR and closure report was provided. By communication dated 25 April 2014 from the Jammu and Kashmir Police a copy of the FIR was provided.

and then returned two years later and was active in Kashmir for about five-six months with Hizbul Mijahideen. Due to his involvement with militancy, the army, government gunmen and the SOG punished the family repeatedly. The Hyderbaig army camp – which included the 29 RR and at a different point the Gurkha Regiment – would regularly beat the family members including Mohammad Sidiq War, Mohammad Sultan War, Nazir Ahmad – all brothers of Ghulam Nabi, and Asadullah War, his wife Saja, Mohammad Sultan's wife Fareeda, Nazir Ahmad's wife Zareefa, and Mohammad Sidiq War's wife Mumtaza.

The most horrific violence that the family faced was on 9/10 February 2000. At around 1:00 am at night the Special Operations Group [SOG] along with the government gunmen came and attacked the family. The following people were at home at that point: Mohammad Siddiq War and his wife, who was pregnant then, Asadullah War, his wife Saja, Mohammad Sidiq War's son Mushtaq Ahmad who was only eight months old, Fareeda and her three children: Javed Ahmad War, Safir Ahmad War and Tanveera, Asadullah's daughter Tasleema and her seven month child Sahil Ahmad War, another daughter of Asadullah War's [Saleema] 19 year old son Javed Ahmad Bhat, and Nazir Ahmad War's daughter Fancy, who was nine years old. A total of 13 people were at home. Except for Fareeda and her children, the remaining people were all on the ground floor of the single storeyed house. That night, at 1:00 pm, there was a knock on the door. Mohammad Sidiq War was asked by his wife to hide in the chimney in the kitchen. Asadullah War opened the door. They were ordered to put their hands up. By this time everyone was awake and downstairs in the corridor. Saja had a lantern. It was a rainy day and there was snow as well. It was SOG personnel outside. But, at that point, they could not identify anyone. Immediately after opening the door they started firing indiscriminately on all the people in the corridor.

Subsequently, the family came to know that the people involved were ASI Surjeet [who rose from the level of driver/constable], and Manna Grenade a government gunman. Both of them were working along with the Rashtriya Rifles. Further, that night, some personnel of the Rashtriya Rifles were also present.

The following were killed: Assadullah War, Javed Ahmad Bhat, son of Saleema and Mohammad Ismail, Fancy, Mushtaq Ahmad and Tanveera. Many were injured. Saja was hit in the heart from a round of firing. She had to then have surgery. She is handicapped as well due to the injuries caused.

The injured were taken to hospitals in Srinagar. ASI

Surjeet came to the hospital at that time. He did not say anything but he was clearly keeping a watch on the family. At that point RK Jalla was in charge of the SOG, Operations. DSP Kuldeep was also present those days in the police in the area. Further, ASI Surjeet once came to the hospital and directly threatened Mohammad Sidiq War not to file a FIR.

The background to this case is that some persons close to the army and SOG were killed earlier that night. Our family was attacked in a form of revenge killing.

A family member of the victims gave the above statement to the IPTK

The family also states that due to fear First Information Report [FIR] 30/2000 was filed at Police Station Pattan against unknown gunmen. Compassionate employment and ex-gratia relief was received as well.

The victim's statement is clear, and cogent evidence is presented of the killing. The role of the alleged perpetrators would have to be more comprehensively investigated.

Case No. 119

Victim Details

Shamim Ahmad Bhat [Torture and Extra-Judicial Killing]

Age: 29

Occupation: Government employee

Son of: Ghulam Mohammad Bhat

Resident of: Hadipora, Handwara

Alleged Perpetrators

1. Major G.K. Bhatila, 30 Rashtriya Rifles [RR], Army, Camp Ghanoh

Case Information

On 20 February 2000, between 8:00 and 10:30 pm Shamim Ahmad Bhat was tortured in his own house. The family members of Shamim Ahmad Bhat were put in another room. The victim was tortured. He was then taken along to the army camp and released only on 24 February 2000. The victim died on 28 February 2000⁹⁹.

First Information Report [FIR] no.20/2000 u/s 364 [Kidnapping/Abducting to murder] and 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Handwara Police Station¹⁰⁰ by Ghulam Mohammad Bhat on 29 February 2000.

99 The Ministry of Defence, on 10 January 2012, in response to information sought under the Jammu and Kashmir Right to Information Act, 2009 [RTI], on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], in relation to this case appears to place this incident on 29 February 2000.

100 Information on this FIR was sought through RTI on 7 October 2011. By communication dated 10 December 2011 a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. By communication dated 9 December 2013 from the Jammu and Kashmir Police a copy of the FIR was provided along with the denial of sanction by the Ministry of Defence. Further information sought through RTI dated 14 November 2014.

The communication of 10 December 2011 stated that a chargesheet had been filed in this case and sanction for prosecution under AFSPA was sought and awaited.

By further communication dated 9 July 2012 in response to the RTI, it was stated that sanction for prosecution under AFSPA was sought in this case on 30 November 2010.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that it had been received on 3 July 2007 and was under consideration.

The Ministry of Defence, in response to a RTI on 10 January 2012 on sanctions for prosecution, stated in relation to this case that sanction had been denied. Further, that: "the allegation is baseless and framed with malafide intention to tarnish image of the army". Further, Jammu and Kashmir Police provided through RTI communication dated 23 May 2011 from Ministry of Defence where sanction for prosecution was declined. This communication refers to a letter from the Government of Jammu and Kashmir, Home Department on 29 December 2006. It was stated that the victim was handed over to the Jammu and Kashmir Police on 24 February 2000 in a fit condition and that the father of the victim later "submitted a declaration" that the allegations of torture and injuries to his son were false.

This case does not find mention in the list of cases furnished by the Government of Jammu and Kashmir in response to a RTI on sanctions for prosecutions under AFSPA on 6 September 2011. Also, the communication of the Jammu and Kashmir Police of 9 July 2012 states that this case was sent on 30 November 2010 for seeking sanction for prosecution under AFSPA. But, surprisingly, the Ministry of Defence seems to have received the case on 3 July 2007, or 29 December 2006. It needs to be clarified how and from whom the Ministry of Defence received this case.

Also, based on the information provided by the Jammu and Kashmir Police, it needs to be investigated why the Government of Jammu and Kashmir and the police took 10 years to process the case for sanction for prosecution under AFSPA.

The assertion by the Ministry of Defence that the allegations were framed with mala fide intention is a sweeping comment on the investigations with no proof and suggests that the army is at loggerheads with the Jammu and Kashmir Police which results in delay or denial of justice. This is further clear when the Ministry of Defence seeks to transfer responsibility to the police by stating that the victim was handed over in

a fit condition.

Case No. 120

Victim Details

Identity not ascertained [Extra-Judicial Killing (Custodial Killing)]

Alleged Perpetrators

1. Major Aman Yadav [Operational name: Mushtaq Ahmad], 28 Rashtriya Rifles [RR], Army

Case Information

The Ministry of Defence, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 10 January 2012 that on the intervening night of 4 and 5 March 2000 there was a death in custody.

First Information Report [FIR] no.30/2000 was filed.

Sanction for prosecution under AFSPA was declined on 15 March 2011. Further, it was stated that that: "involvement of Major Aman Yadav is not even prima facie established. The officer was not involved in the incident and the same has been established by the police investigation, incident report, seizure memo, FIR lodged by 28 Rashtriya Rifles and statement of Captain Chhatwal".

The Jammu and Kashmir Police investigations in the case are not with the IPTK and therefore the decline of sanction for prosecution under AFSPA cannot be appropriately analyzed. But, it does appear contradictory that the Ministry of Defence relies on the police investigations to decline sanction when presumably the Jammu and Kashmir Police only sent the case to the Ministry of Defence after ascertaining that the crime was committed by the alleged perpetrator.

Further, it is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir 10 years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 121Victim Details

Ashiq Rasool Bhat [Abduction, Torture and Extra-Judicial Killing (Fake Encounter)]

Age: 22

Occupation: 1st year Bachelor of Sciences [BSC] student at Islamia College, Hawal [recently admitted] / Was also working with a cement factory at Laar Ganderbal

Son of: Gulzar Ahmad Bhat

Resident of: Yarmukam, Manigam, Ganderbal

Alleged Perpetrators

1. Commanding Officer [Colonel], 19 Rashtriya Rifles [RR], Army, Camp Manigam, Ganderbal

Case Information

The family of Ashiq Rasool Bhat states that on 13 March 2000, Ashiq Rasool Bhat left his residence for his college at Hawal, Srinagar to submit the application for his admission in the BSC 1st year programme. Then he went to the cement factory at Laar Ganderbal to collect his wages from his employer.

The family of Ashiq Rasool Bhat states that he had quit working in the factory after the declaration of his 12th Standard results. After collecting his remaining wages of Rs. 1400 he left for his native village Manigam but the family states that he never came home.

The family states that he had been picked up between Laar and Manigam. The family states that they kept searching for him everywhere, with all their neighbors and relatives but they could not find his whereabouts.

After three days, the family of Ashiq Rasool Bhat went to the Ganderbal Police Station and informed the police about his disappearance. The police gave them a receipt for the application that the family had filed but the family states that they lost the receipt.

After 10 days, on 23 March 2000, the family states that they received a clue from village Waliwar. The locals of that village said that persons working with the army were talking about the killing of a “master” with militants. Then the family went to the Ganderbal Police station to cross check the information given by the locals and asked the police about recent killings in the area. The police showed the brother of Ashiq Rasool Bhat three photographs of the persons killed and one of the photographs was found to be Ashiq Rasool Bhat.

The family states that on 25 March 2000, they exhumed the body of Ashiq Rasool Bhat from a

graveyard near Ganderbal Police station, at Dobipora, Ganderbal. The family then took the body and buried it in their native village graveyard.

The family states that Ashiq Rasool Bhat had bullet injuries on the left side of his chest and also bore visible torture marks on the forehead which were the marks of the gunbutt. The police confirmed that he had been killed in the staged battle at Waliwar by the 19 RR camped at Manigam.

The family states that it was the alleged perpetrator who killed the victim. The family states that the locals of the village have given a written declaration about the innocence of Ashiq Rasool Bhat. An autopsy was not conducted.

Following the death of Ashiq Rasool Bhat, the family states that the alleged perpetrator visited their house on numerous occasions. He expressed regret on the killings and offered relief to the family, which they refused.

Three persons were killed and identified as militants: Barab Khan, from Karachi, Hafiz Khan and Zaffer Iqbal Querishi, also from Pakistan. One of them was later identified as Ashiq Rasool Bhat.

The family of Ashiq Rasool Bhat gave a statement to the IPTK on 22 February 2012.

First Information Report [FIR] no.63/2000 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition / possession/manufacture / sale of prohibited arms/ammunition]/27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 was filed at the Ganderbal Police Station by the army.¹⁰¹

The family of Ashiq Rasool Bhat filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 180/2003] seeking completion of investigations. The petition states that the FIR, filed by the army, stated that an encounter took place on 14 March 2000 in Village Chantwahama where three foreign militants were killed: Larab Khan, Hafiz Khan and Zafar Iqbal Qureshi. The petition states that the person named as Zafar Iqbal Qureshi was in fact Ashiq Rasool Bhat.

In response to the petition filed, the Union of India, Director General of Police, Jammu and Kashmir, Senior Superintendent of Police [SSP], Ganderbal and Station House Officer [SHO], Ganderbal Police Station, contended that while indeed Ashiq Rasool Bhat was a local, he was also a militant and was killed during a “fierce fight” with the army.

¹⁰¹ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. By communication dated 2 May 2014 from the Jammu and Kashmir Police information was provided that the case was earlier closed as untraced but senior formations have reopened the case and entrusted investigations to the Deputy Superintendent of Police [DSP], Headquarters for further investigations. Further information sought through RTI dated 14 November 2014. By communication dated 18 December 2014 the same information was repeated and in addition it was stated that the case was under investigation.

A letter from the Superintendent of Police [SP], Ganderbal to the District Magistrate, Srinagar on 24 March 2000 refers to the FIR filed, the contention of the family of Ashiq Rasool Bhat and requests for necessary orders for the exhumation of the body of Zafar Iqbal Khan – who is believed by his family to be the victim. There is a discrepancy on the last name of this person as the family of Ashiq Rasool Bhat refers to him as Zafar Iqbal Qureshi. The body of Ashiq Rasool Bhat was exhumed based on the order of the District Magistrate, Srinagar on 24 March 2000.

The mother of Ashiq Rasool Bhat, Mugli, had filed another petition [OWP 208/2003] with regard to the disappearance of another son in 1989. Both these petitions were clubbed together but then dismissed on 21 October 2005 for want of prosecution.

A restoration application was filed and the petitions were restituted as 191/2006.

OWP 180/2003 was disposed on 25 May 2009. The stand of the SHO, Ganderbal Police Station was that the case was closed following investigations that revealed that three militants had been killed. The family of Ashiq Rasool Bhat contended that this closure report had to be filed before a Magistrate for approval. Without taking a position on this issue, but stating that the respondents must follow the law, the petition was disposed off by the High Court¹⁰².

The family of Ashiq Rasool Bhat states that a case is ongoing at the Ganderbal Court. The family of Ashiq Rasool Bhat filed an application before the Judicial Magistrate 1st Class, Ganderbal seeking a re-investigation on the FIR filed. The police authorities submitted that Ashiq Rasool Bhat was a militant and that a closure report in the case was going to be filed before the court. On 27 July 2010 the court ordered that the closure report be filed within one month.

The family of Ashiq Rasool Bhat has received no relief/compensation.

It would appear that the Jammu and Kashmir Police has continued to stick to its version of events of the victim being a militant killed in a legitimate encounter. But, despite the passage of twelve years and at least until 2010, based on information available, the police has failed to allow a court to scrutinize its findings.

This delay has effectively allowed the perpetrators of the crime to evade justice. This has been further compounded by the manner in which the High Court did not assert itself and monitor investigations to

enquire if the victim was killed under legal circumstances.

Finally, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 122

Victim Details

Mohammad Maqbool Dar [Abduction, Torture and Extra-Judicial Killing]

Age: 25

Occupation: Farmer/ "Reddah wallah" [Cart man]

Son of: Mohammad Ramzan Dar¹⁰³

Resident of: Batapora, Magam, Handwara, Kupwara District

Alleged Perpetrators

1. Major R.S. Athreye / R.S. Athar Anand¹⁰⁴, 24 Rashtriya Rifles [RR], Army, Camp Magam
2. Captain R. Awasthi, 24 Rashtriya Rifles [RR], Army, Camp Magam

Case Information

On 13 March 2000 [the family of the victim is unsure of the actual date], at about 10:00 am, the various cart men were called to the army camp at Magam. Mohammad Maqbool Dar was identified in a line up at the camp, a *Pheran* [Kashmiri winter wear] was placed over him, and while the others were allowed to leave by about 12:00 noon, he was not. The villagers then went to the army camp and requested that Mohammad Maqbool Dar be released, but he was not released.

Subsequently, when the relatives of the Mohammad Maqbool Dar went to the camp they were informed that he had fled.

Later on, at the intervention of a politician, Mushtaq Lone, the body of Mohammad Maqbool Dar was received at the Watayin Camp. Mohammad Maqbool Dar was still alive but in a very critical condition. His body bore burn marks and was severely tortured.

Mohammad Maqbool Dar was taken to the Sher-e-Kashmir Institute of Medical Sciences [SKIMS], Soura, Srinagar, where he succumbed to his injuries on 1 April 2000.

For about two years following the death of

102 Information on the petition number OWP 180/2003 was sought through RTI on 16 February 2012. No information was provided. Information on this petition was sought again on 4 April 2014. Information on OWP 208/2003 was sought through RTI on 2 July 2012. Information was provided.

103 The Government of Jammu and Kashmir, in response to information sought under the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], on 6 September 2011 in relation to this case mistakenly refers to the father of the victim as: "Samad Dar".

104 The Government of Jammu and Kashmir, in response to a RTI on sanctions for prosecutions under AFSPA, on 6 September 2011 in relation to this case refers to this person as "RS Athar Anand", whereas the Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA refers to him as: "RS Athreye".

Mohammad Maqbool Dar his family faced harassment from army officials in relation to the case being pursued.

First Information Report [FIR] no. 30/2000 u/s 343 [Wrongful confinement for three or more days], 346 [Wrongful confinement in secret] and 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Handwara Police Station on 18 March 2000 for the disappearance of the victim.¹⁰⁵ was filed at the Handwara Police Station on 18 March 2000 for the disappearance of the victim. By communication dated 10 December 2011 from the Jammu and Kashmir Police it was stated that the case was closed by declaring the perpetrators as untraced on 3 June 2010. A copy of the closure report states that the army officials did not provide statements before the police and that the case was being forwarded to the Home Ministry for prosecution sanction under AFSPA. Further, that the case was closed as untraced as nothing finally happened in the case. By communication dated 9 July 2012 from the Jammu and Kashmir Police a copy of the FIR was provided and it was stated that a final report in the case was filed on 1 March 2012.

The family of Mohammad Maqbool Dar received Rs.1,00,000 ex-gratia government relief and have not received compassionate employment under SRO-43 [Statutory Rules and Orders]. At the time of the incident, the next of kin of the victim, his son, was a minor. As the son is no longer a minor, the family is hopeful of him receiving compassionate employment.

The family of the victim gave a statement to the IPTK on 15 February 2012.

The Ministry of Defence, in its affidavit before the High Court in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that sanction was declined vide order dated 26 February 2009.

The Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction had been declined.

Further, the Ministry of Defence, in response to an RTI on 10 January 2012 on sanctions for prosecution under AFSPA, while confirming the decline of the sanction states that: "the FIR and the statement of witnesses stand in contradiction. The unilateral conclusions reached by the police appeared to have been made under pressure from terrorists and sympathizers to blame and malign the image of the army".

The police investigations into the extra-judicial killing of Mohammad Maqbool Dar which led to seeking

sanction for prosecution under AFSPA has been questioned by the Ministry of Defence on grounds of there being contradictions on record and claiming it to be a result of pressure from terrorists and sympathizers for maligning the image of the army. No details on the contradictions are provided. The non-cooperation of the army with the police investigations may have led to discrepancies for which the army should also share the blame. It appears that the army deliberately chose not to assist the investigations and later used this in its favour. The assertion by the Ministry of Defence that the police has failed to conduct a fair investigation because of pressure suggests that the army is at loggerheads with the Jammu and Kashmir Police which results in delay or denial of justice.

Strangely, the police after finalizing the investigations against the alleged perpetrators closed the case due to the non-cooperation of the army without seeking any judicial assistance and only filed a report before the court in March 2012.

The evidence against the army was strengthened by the support of Mushtaq Lone, the then Minister of State for Home Affairs, who helped in getting the body of Mohammad Maqbool Dar from the Watayin army camp. Mushtaq Lone was assassinated on 11 September 2002. It needs to be ascertained whether the police took a statement from Mushtaq Lone which would have been crucial evidence in this case.

Case No. 123

Victim Details

1. Zahoor Ahmad Dalal [Abduction and Extra-Judicial Killing (Fake Encounter)]
Son of: Abdul Gaffar Dalal
Resident of: Moominabad, Islamabad District
2. Bashir Ahmad Bhat [Abduction and Extra-Judicial Killing (Fake Encounter)]
Son of: Abdul Aziz Bhat
Resident of: Halan, Verinag, Islamabad District
3. Mohammad Yousuf Malik [Abduction and Extra-Judicial Killing (Fake Encounter)]
Son of: Abdul Kabir Malik
Resident of: Halan, Verinag, Islamabad District
4. Jumma Khan [Abduction and Extra-Judicial Killing (Fake Encounter)]
Age: 55
Son of: Fakir Khan
Resident of: Brari Angan, Islamabad District
5. Jumma Khan [Abduction and Extra-Judicial Killing (Fake Encounter)]
Age: 53
Son of: Amir Ullah Khan

¹⁰⁵ Information on this FIR was sought through RTI on 7 October 2011. Further information sought through RTI on 15 October 2013. By communication dated 9 December 2013 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI dated 14 November 2014.

Resident of: Brari Angan, Islamabad District

Government Gunman [Ikhwan]

Alleged Perpetrators

1. Colonel Ajay Saxena, 7 Rashtriya Rifles [RR], Camped at Khundroo [subsequently Major General]
2. Major Brajendra Pratap Singh, 7 Rashtriya Rifles [RR], Camped at Khundroo [subsequently Lieutenant Colonel]
3. Major Sourabh Sharma, 7 Rashtriya Rifles [RR], Camped at Khundroo
4. Major Amit Saxena, 7 Rashtriya Rifles [RR], Camped at Khundroo
5. Subedar Idrees Khan, 7 Rashtriya Rifles [RR], Camped at Khundroo
6. Captain S.S. Pathania, 7 Rashtriya Rifles [RR] Camped at Khundroo
7. Captain Puneet Dutta, 7 Rashtriya Rifles [RR] Camped at Khundroo
8. Colonel I.J Peoples, 7 Rashtriya Rifles [RR] Camped at Khundroo
9. Brigadier Deepak Bajaj, 7 Rashtriya Rifles [RR]
10. Senior Superintendent of Police [SSP] Farooq Khan, Jammu and Kashmir Police.
11. Inspector Mukesh Kumar, Jammu and Kashmir Police
12. Assistant Sub Inspector [ASI] Bashir Ahmad, Jammu and Kashmir Police
13. Deputy Superintendent of Police [DSP] Tejinder Singh, Jammu and Kashmir Police

Case Information

25 March 2000.

Read Chapter 2: Theatres' of Violence-Part E relating to the 'fake encounter' at Pathribal.

Case No. 124

Victim Details

Khwaja Habibullah Wagay [Extra-Judicial Killing]
Age: 60
Occupation: Inspector, Fire and Emergency Department
Son of: Haji Abdul Ahad Wagay
Resident of: Sadunara, Bandipora District

Alleged Perpetrators

1. Zahoor Ahmad Wagay, son of Sonaulah Wagay, Government Gunman [Ikhwan]
2. Ghulam Hassan Wagay, son of Mohammad Wagay [reportedly killed subsequently by militants], Government Gunman [Ikhwan]
3. Ghulam Mohammad Margoo [Operational name: Mohammad Pir], son of Gaffar Margoo

Case Information

On 2 April 2000, Khwaja Habibullah Wagay left for work along with Abdul Majeed Wagay, his cousin. On the way, at Veer Khan, Sadarkote, they were stopped by Zahoor Ahmad Wagay, Ghulam Hassan Wagay and Ghulam Mohammad Margoo. Khwaja Habibullah Wagay was accused of being an active member of the Jamaat-e-Islamia and was shot dead. Abdul Majeed Wagay was witness to the killing. The alleged perpetrators were working with the army.

The family of Khwaja Habibullah Wagay has received no relief or compensation.

First Information Report [FIR] no.37/2000 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition / possession / manufacture / sale of prohibited arms / ammunition] / 25 [Punishment for certain offences] Arms Act, 1959 was filed at the Sumbal Police Station¹⁰⁶. The family of Khwaja Habibullah Wagay gave a statement to the IPTK on 9 February 2012.

Despite the passage of 12 years, no information exists on whether any investigations or prosecutions were conducted by the Jammu and Kashmir Police in this case.

It therefore appears that absolute impunity has been ensured for the perpetrators of this crime.

Case No. 125

Victim Details

[Massacre/Extra-Judicial Killings]

1. Fayaz Ahmad Khan
Son of: Ghulam Hassan Khan
2. Mohammad Rafiq Khan
Son of: Juma Khan
3. Hanief Khan Gojar
Son of: Abdul Gafoor Khan
4. Akhter Ali Khan
Son of: Pappa Khan
5. Noorani Khan
Son of: Pappa Khan
6. Nissar Ahmed Khan
Son of: Sabzar Ali Khan
7. Noor-ul Amin Khan
Son of: Popa Khan
8. Mushtaq Ahmed Khan
Son of: Farid Khan

All Resident of: villages close to Barakpora, Bulbul Nowgam, Islamabad District

¹⁰⁶ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. By communication dated 20 November 2013 from the Jammu and Kashmir Police a copy of the final report was provided. Further information was provided that the case had been chargesheeted. Further information sought through RTI dated 14 November 2014.

Alleged Perpetrators

1. Assistant Sub-Inspector [ASI] Ashok Kumar, Special Operations Group [SOG], Jammu and Kashmir Police
2. Head Constable Krishan Kumar, Special Operations Group [SOG], Jammu and Kashmir Police
3. Selection Grade Constable Chaman Lal, Special Operations Group [SOG], Jammu and Kashmir Police
4. Sub-Inspector [SI] R.P. Roy, Commander, Central Reserve Police Force [CRPF]
5. Constable P.C. Hundique, Central Reserve Police Force [CRPF]
6. Constable Shyam Kumar, Central Reserve Police Force [CRPF]
7. Constable S.V. Limbekar [Operational name: Venkati], Central Reserve Police Force [CRPF]

Case Information

3 April 2000.

Read Chapter 2: Theatres' of Violence-Part E relating to the firing at Brakpora.

Case No. 126**Victim Details**

Tariq Ahmad Sheikh [Abduction, Torture and Extra-Judicial Killing (Fake encounter)]

Age: 22

Son of: Abdul Aziz Sheikh [deceased], Fazi Bano

Spouse: Fahmeeda

Resident of: Peht Zanigam, Beerwah, Budgam District

Alleged Perpetrators

1. Birendra Kumar Jha, 108th Battalion Border Security Force [BSF] [presently 11th Battalion BSF]
2. Head Constable Ramesh Lal, 140th Battalion Border Security Force [BSF]
3. Constable Madan Lal¹⁰⁷, 4th Battalion Border Security Force [BSF]

Case Information

As per the family of Tariq Ahmad Sheikh, on 17 April 2000, at about 6:00 am, the victim was picked up from his residence by the BSF forces that came in three or four cars.

On that day one of the villagers at the scene was given a phone number of the BSF Camp, Rawalpura, Srinagar by the BSF Inspector heading the party. The

number was given in case Tariq Ahmad Sheikh did not return. But, when the number was called, the BSF camp denied arresting Tariq Ahmad Sheikh.

Tariq Ahmad Sheikh was taken to the Sanatnagar Camp, Srinagar.

On 22 April 2000 the family of Tariq Ahmad Sheikh heard that his dead body was at the Chadoora Police Station. The body was then handed over to the Beerwah Police Station. The body had bullet injuries and it seemed he had been tortured.

First Information Report [FIR] no. 168/2000 u/s 302 [Murder], 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Beerwah Police Station on 25 July 2000 under the directions of the Chief Judicial Magistrate [CJM], Budgam¹⁰⁸.

Further, the Jammu and Kashmir Police provided information that on 25 July 2000 the mother of the victim produced a written application that was endorsed by the CJM, Magam to the effect that on 17 April 2000 her son was picked up by the BSF and on 22 April 2000 she came to know that her son was dead and the body was with the Chadoora Police Station. She stated that her son was a released militant who had remained under detention for 10 months and was now silent as well as attending the army camp regularly. The case was chargesheeted before the Judicial Magistrate 1st Class, Magam on 18 November 2009 against BSF personnel "BK Jahde", "HC Ramesh Lal" and "Ct. Mohan Lal" wherefrom the same will be referred to BSF court for further prosecution as per directions of the Home Department.

Also, on record, is FIR no.56/2000 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition/possession/manufacture/sale of prohibited arms/ammunition]/25 [Punishment for certain offences] Arms Act, 1959 filed at Chadoora Police Station by the BSF that makes reference to the death of a militant on the intervening night of 21 and 22 April 2000. Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

The State Human Rights Commission [SHRC] issued its final decision on 18 June 2003 and recommended ex-gratia government relief of Rs.2,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders]. The family of Tariq Ahmad Sheikh filed a petition before the High Court of Jammu and Kashmir against the non-implementation of the SHRC recommendations.

¹⁰⁷ The names of the alleged perpetrators are as per the records in the General Security Force Court trial of the BSF.

¹⁰⁸ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. A copy of the FIR was provided on 27 December 2011 by the Jammu and Kashmir Police.

The BSF conducted a trial under the General Security Force Court at which the father-in-law and the wife of the victim testified. On 29 February 2012 information was sought through RTI to the BSF on the trial. By letter dated 20 March 2012, the IPTK was informed that the BSF was exempted from providing this information. The matter was agitated upto the Central Information Commission [CIC], which on 7 January 2014 ordered that the status be provided but refused to order further details as it considered it to be an invasion of privacy. This is a clearly erroneous understanding of the law as there is an obvious public interest in such information being shared. On 3 March 2014, the BSF provided information that three persons were jointly tried by court-martial from 3 November to 22 November 2011, for murder and abducting for murder, and found them not guilty. This was confirmed by the confirming authority on 6 July 2012.

The Government of Jammu and Kashmir, in response to a RTI on sanctions for prosecutions under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 in relation to this case that sanction was declined on 30 September 2008. While reference is made to the "BSF Camp Santhnagar", no specific mention of is made of the accused involved in the case.

It is noteworthy that it took the Jammu and Kashmir Police, Government of Jammu and Kashmir and Ministry of Home Affairs eight years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice. Even the FIR by the family of the victim was only filed after the intervention of the CJM, Budgam.

Further, the false FIR no.56/2000 filed in this case by the army reveals the practice of the armed forces carrying out fake encounters possibly for rewards, awards and promotions.

The manner in which the Jammu and Kashmir Police mechanically filed the FIR on behalf of the BSF, but not when it came to the family of the victim, needs to be investigated.

Further, while it appears a BSF trial was instituted, there has been a complete lack of transparency by the BSF on the trial, particularly with the family of the victim. The CIC has followed suit and refused to order full disclosure of the court-martial process.

Case No. 127

Victim Details

Mohammad Rafiq Baqal [Torture, Extra-judicial killing]

Age: 38

Occupation: Shop owner at Goni Khan [New Novelty

store]

Son of: Ghulam Mohammad Baqal

Resident of: Kukar Bazar, Srinagar

Alleged Perpetrators

1. Commandant [as of June 2000], 127 Battalion, Border Security Force [BSF], Sanat Nagar Camp
2. Inspector Rattan Singh, 127 Battalion, Border Security Force [BSF], Sanat Nagar Camp

Case Information

Mohammad Rafiq Baqal used to run his cosmetics shop [New Novelty store] at Goni Khan Market, Srinagar. His younger brother Javed helped him out at the shop. On 10 June 2000, the brothers were closing the shop, like on any other day. The victim had to attend a marriage ceremony at Rajbagh, Srinagar. Some of his friends had already reached the shop to accompany him as they too were supposed to attend the ceremony.

At around 7:30-8 pm, Rafiq asked his younger brother to hand him the keys of their car and took some cash [around Rs. 400] with him. Soon, Rafiq, along with his friends [Riyaz Ahmad Baqal, Altaf Ahmad Bathkoo, Hilal Ahmad Kuchay, Mohammad Shafi Kuchay, Mohammad Ismail Dar], left the shop to proceed to Rajbagh, while Javed went straight home, a few meters away at Kukar Bazaar. Rafiq didn't return home by 11 pm, thus worrying his family members.

At about 11:30 pm, Rafiq's friends, who lived nearby, returned home and informed the family that the BSF troopers at Amira Kadal had apprehended Rafiq. They further narrated to the family that they were asked to de-board the car and troops enquired about the owner of the car. They were beaten and asked to run or else they would be killed, while they didn't let Rafiq go.

Rafiq's family members went looking for him but to no avail. They even pleaded before the troopers stationed around Amira Kadal to inform them of the whereabouts of Rafiq but they expressed their ignorance about the same. His family returned home hoping to look for Rafiq the next morning.

The next day, Javed's friend, who resided at Maharaja Bazaar, informed him that their car was at Shaheed Gunj Police Station. So Javed visited the police station and got to know that his brother Rafiq had been shot and killed by BSF troopers while attempting to escape. He was also told that Rafiq was carrying RDX and detonators in their car. Javed got frustrated and demanded the dead body of his brother, which the police officials asked him to collect from the police control room.

Then, Javed, along with his family members and neighbors, gathered outside the police control room and demand the dead body of Rafiq, but the

authorities were reluctant to hand over the same. Javed warned the police officials that he, along with the victim's two sons, would set himself ablaze if they didn't hand over the body. Fearing trouble, the authorities finally handed over the dead body to their family after half an hour. While having a close look at the body, the family noticed that it had marks and bruises. Moreover, the victim had been shot in the forehead and another shot at the shoulder, so the family exclaimed their surprise and disbelief at the police version that he had been shot while running away.

On enquiring further about the incident, the younger brother found out through a fisherman living in a houseboat near Amira Kadal that the victim had been severely tortured. He had heard the victim's screams till about 2:30 am. After some time, the screaming stopped, a few minutes after which he heard 2-3 gunshots. Chaudhary, a goldsmith living nearby, also testified to this sequence of events.

The witness then visited Shaheed Gunj Police Station where he was shown the First Information Report [FIR] filed against his brother wherein he was accused as a militant, detained with RDX and detonators in his car. While being questioned about all this, the victim was fired upon and he died. The witness was utterly perturbed by these allegations and demanded the police officials to show him the RDX and detonators. What they then showed him really surprised him – they brought forth some powder on a piece of paper and a few wires of the car's tape recorder and showed it as RDX and detonators respectively.

The victim's family then got a separate FIR registered at Maisuma police station after much effort. They contacted many friends, who used their good offices to reach the Deputy Inspector General [DIG] and Inspector General [IG] of Police, yet, they got no information about the incident and the allegations put upon the victim.

The case got registered in the SHRC as well. Job and ex-gratia relief was announced too but the family declined to accept them. Their family, along with the five friends of Rafiq, used to visit BSF 127 Battalion at the Sanat Nagar camp for recording their statements. But they were harassed there by the troopers. Chauhan, the commandant of the camp, scolded the troopers for harassing the victim's family.

One day, however, while coming out of the camp, Reyaz Baqal, one of the victim's friends and the one who had accompanied him that day, was threatened by a trooper at the gate that he would be killed like Rafiq. While travelling back home, Reyaz Baqal developed pain in his chest and later died as a result of a heart attack.

Witness found out at the camp that an officer had asked Rattan Singh to arrest Rafiq. According to the interviewee, this was related to an incident that had taken place at their shop a week ago. An officer of

commandant rank had visited their shop a week ago and asked for *Charlie* perfume. Rafiq had demanded money for this which was not the order at that time [to ask for money from the troopers]. The commander was angered by his behavior and had threatened to kill him.

Meanwhile, the witness was secretly informed by a source to meet some persons at Hotel International who would talk to him about the case. On reaching there, he met Deputy Inspector General of Police Bhan and Ikhwan Papa Kishtwari and Javaid Kahwa. They offered him money to drop the case. But the witness declined. He in turn asked them to take money as much they wanted and give him details about his brother's killers.

The family has since then moved on, changed their residence to uptown Srinagar and do not follow the case anymore.

The brother of the victim, Javed Ahmad Baqal, gave the above statement to the IPTK on 19 November 2014.

The extra-judicial killing of the victim by the BSF is made out very clearly in the testimony above. What is less certain is the actual involvement of the two alleged perpetrators. This is hearsay evidence where even the source of the information i.e. the involvement of either of the two alleged perpetrators, is uncertain. But, also on record is an official response on the case from the BSF. In response to the Right to Information [RTI] on court-martials in Jammu and Kashmir, the BSF gave relevant information by communication dated 3 March 2014 that a Court Martial was held and one personnel [no name was provided] was held guilty under section 302 for murder and punishment was rigorous imprisonment for 2 years and dismissal from service. Therefore, even the BSF accepts the killing and has found against one of its own personnel. But, no name is provided. Indicative of the nature of the court-martial process in Jammu and Kashmir, the punishment for murder for the BSF is a mere 2 years of imprisonment and dismissal from service.

Case No. 128

Victim Details

Bashir Ahmad Bhat [Extra-judicial killing]

Age: 40 years

Occupation: Government Teacher

Son of: Abdul Rehman Bhat

Resident of: Aloosa, Bandipora district

Alleged Perpetrators

1. Gagtar Singh, Deputy Superintendent of Police [DSP], Special Operations Group [SOG], Jammu and Kashmir Police
2. Bashir Khanday, Government Gunman [Ikhwan]

3. Personnel, 5 Rashtriya Rifles [RR], Ganderbal Camp

Case Information

DSP Gagtar Singh, along with personnel from 5 RR, Ganderbal Camp, picked up Bashir Ahmad with the help of Ikhwan Bashir Khanday. They picked the victim up when he was coming back from his duty at Bongund Primary School at Tangmarg, Baramulla.

The victim was taken to Khurhama, Ganderbal and killed in a fake encounter. The dead body was handed over to his relatives on 16 June 2000 through the police.

The wife of the victim, Arsha, gave the above statement to the IPTK on 14 May 2015.

First Information Report [FIR] no. 125/2000 was filed at the Ganderbal Police Station by DSP Operations on 16 June 2000. The FIR states that on the intervening night of 15 and 16 June the SOG from Ganderbal and 5 RR killed a militant known as “Bashir Kota alias Master Bashir”, Divisional Commander of Hizbul Mujahideen. Recovery of weapons was also made. Further information on this FIR was sought through RTI dated 15 July 2015.

Also on file is a certification from the office of the Zonal Education Officer, Kunzer that the victim had attended his duty in Government Primary School, Bongund upto 15 June 2000 as per the attendance register available in the school.

The State Human Rights Commission [SHRC] issued a decision in this case on 10 June 2013. Before the SHRC, Inspector General of Police submitted a report where it was stated that SOG Ganderbal and 5 RR laid an ambush and “Bashir Ahmad alias Kuta” was killed. Bashir Ahmad was a sympathizer of Jamaat-e-Islami, a close associate of Hizbul Mujahideen and was working as an administrator for the militant group. Deputy Commissioner Bandipora relied on the report of the Inspector General of Police. But, the Deputy Commissioner also noted that the victim was a government teacher and had attended his duties upto 15 June 2000. The Deputy Commissioner also took statements of the local people from Aloosa village who confirmed that the victim was not part of any militant group. Nonetheless, the Deputy Commissioner concluded that one could not say with “certainty” that the victim was not connected to a militant group. The SHRC found in favour of the victim family. The decision arrives at the conclusion that the victim was not part of a militant group. Further, that the report of the police was not based on cogent reasons and substantive evidence but is mere speculation to provide cover for the misdeeds of the police. The SHRC recommended ex-gratia relief and other dues to be paid to the family.

The statement of the witness, along with the other

evidence above, and supported by the SHRC decision, is a clear indictment of the alleged perpetrators for the killing of the victim. The Inspector General of Police who submitted the report before the SHRC is also indicted for his role in the cover up [as noted by the SHRC itself].

Case No. 129

Victim Details

Aijaz Ahmad Bazaz [Abduction, Torture and Extra-Judicial Killing]

Age: 19

Occupation: Student

Son of: Mohammad Shafi Bazaz

Resident of: Manderbagh, Gowkadal, Srinagar

Alleged Perpetrators

1. Imtiyaz, Station House Officer [SHO], Jammu and Kashmir Police
2. Devinder Singh, Special Operations Group [SOG], Jammu and Kashmir Police, Humhama Camp, Budgam District
3. Bunt Singh, Special Operations Group [SOG], Jammu and Kashmir Police, Humhama Camp, Budgam District
4. Munawar Singh, Special Operations Group [SOG], Jammu and Kashmir Police, Humhama Camp, Budgam District

Case Information

On 15 June 2000 Aijaz Ahmad Bazaz went to meet his relatives at Bemina, Srinagar.

On 17 June 2000, the family of Aijaz Ahmad Bazaz heard that he had been picked up by the SOG of the Jammu and Kashmir Police, Humhama camp.

The family members went to the SOG, Humhama Camp and met SHO Imtiyaz and Devinder Singh. Both of them accepted that Aijaz Ahmad Bazaz was with them and that a meeting would be arranged if Rs. 40,000 was provided to them.

On 22 June 2000 the Kral Khud Police Station informed the family of Aijaz Ahmad Bazaz that his dead body was with them. He was shown to have been killed in an encounter at the Bemina bye-pass, Srinagar.

The family of the victim did not file any report in the police station nor did they seek any relief. The family believes that Aijaz Ahmad Bazaz died due to torture.

It is unclear whether the police itself filed a FIR in the case.

The family of Aijaz Ahmad Bazaz gave a statement to the IPTK on 28 February 2012.

Case No. 130Victim Details

Mohammad Rafiq [Abduction and Extra-Judicial Killing]

Son of: Atta Mohammad Gujjar

Resident of: Sathra Mohalla, Chowana, Mandi, Poonch District

Alleged Perpetrators

1. S.M.Romesh Chand, 8th Battalion Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Saklot Block, Mandi
2. Subedar Balraj, 8th Battalion Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Saklot Block, Mandi
3. Commanding Officer [Colonel], 8th Battalion Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Saklot Block, Mandi
4. Mohammad Sharif, son of Atta Mohammad, resident of Sathra, Mandi, 8th Battalion Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Saklot Block, Mandi
5. Muneer Hussain, son of Atta Mohammad, resident of Jandrola, Mandi, 8th Battalion Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Saklot Block, Mandi
6. Muneer Hussain, son of Habib, resident of Jandrola, 8th Battalion Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Saklot Block, Mandi

Case Information

On 7 October 2000 around 15/16 personnel of the 8th Battalion JAKLI camped at Saklot Block, Mandi picked up Mohammad Rafiq.

On 9 October 2000 the dead body of Mohammad Rafiq was found a short distance from the residence of the victim.

First Information Report [FIR] no.56/2000 u/s 364 [Kidnapping/Abducting to murder], 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Mandi Police Station¹⁰⁹. Further information sought through RTI dated 14 November 2014.

The family of Mohammad Rafiq approached the State Human Rights Commission [SHRC] on 3 May 2007 and a final decision was delivered on 19 September 2011.

The SHRC recommended that the investigations in the case be duly conducted and that compensatory relief on compassionate grounds be provided to the family of Mohammad Rafiq.

The SHRC first considered the reports of the Station House Officer [SHO], Mandi Police Station, filed on 2 June 2009 and 18 April 2010, that confirmed that as per investigations the kidnapping/abduction of Mohammad Rafiq was made out. But, the 8th Battalion JAKLI was not cooperating with the investigations and the perpetrators of the crime had not been identified nor made available to the investigating team of the police.

The SHRC also considered the report of Director General of Police [DGP], Jammu and Kashmir dated 12 July 2008, which stated that during investigations it was found that on 7 October 2000 Mohammad Rafiq was kidnapped by the search party of the 8th Battalion JAKLI and on 9 October 2000 the dead body of Mohammad Rafiq was found at the Sathra top, 300 yards away from the house of Mohammad Rafiq.

The investigation of the case which was earlier closed by declaring the perpetrators as untraced was reportedly ordered to be reopened on the basis of the Forensic Science Laboratory report, and the investigations were under progress.

In response, the family of Mohammad Rafiq filed a rejoinder where the names of the alleged perpetrators were listed and it sought that action be taken against them.

The SHRC also considered the affidavits of Munir Hussain, Mohammad Latief, Mohammad Hanief, Shah Hussain, Aftab Hussain and Mohammad Afzal, and found that they supported the family of Mohammad Rafiq's allegations.

Based on the above, the SHRC, while not naming any of the alleged perpetrators, found that the case of the family of Mohammad Rafiq was made out and indicted the 8th Battalion JAKLI.

Further, it was noted that there was no adverse report against the family of Mohammad Rafiq.

Despite the passage of 12 years no information exists on whether any investigations or prosecutions were conducted by the Jammu and Kashmir Police in this case.

The Ministry of Defence seems to have cared very little about the SHRC order, the Jammu and Kashmir Police investigations or in instituting a process for delivering justice.

The available documents do not suggest that even a Court-Martial was conducted in this case by the army.

¹⁰⁹ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided. Further information sought through RTI on 15 October 2013.

Case No. 131Victim Details

Mohammad Urfan Umer [Extra-Judicial Killing]
 Occupation: 10th Standard student
 Son of: Umer-ud-Din
 Resident of: Khaned Morha Soni Funara, Ramnagar,
 Udhampur District

Alleged Perpetrators

1. Manzoor Ahmad, Special Police Officer [SPO], Jammu and Kashmir
2. Urash Paul, Special Police Officer [SPO], Jammu and Kashmir

Case Information

On 5 November 2000, the armed forces along with the Jammu and Kashmir Police were carrying out a combing operation entered the house of Umer-ud-Din and enquired after militants. Umer-ud-Din expressed his inability to assist and then the alleged perpetrators abducted Mohammad Urfan Umer, his son, for interrogation and then shot him dead.

The family of the victim approached the State Human Rights Commission [SHRC] on 13 March 2005 and a final decision was issued on 6 May 2008.

Senior Superintendent of Police [SSP], Udhampur submitted a report, based on an enquiry conducted by the Sub-District Police Officer [SDPO], Ramnagar.

This enquiry concluded that the victim was a guide/informer of militants and had died during an encounter. In response, the family of the victim submitted proof that the victim was a 10th Standard student.

Further, statements were submitted on behalf of persons from the village that confirmed that the victim was innocent.

The SHRC in its final decision found in favour of the victim and stated that the enquiry by the SDPO, Ramnagar was “one sided” and an attempt to cover up the deeds of the police, particularly the alleged perpetrators.

The SHRC recommended that the Government conduct an enquiry, recommended compensation of Rs.2,00,000, and compassionate employment under SRO-43 [Statutory Rules and Orders].

Despite the decision of the SHRC, it is unclear whether any action was at all taken following the recommendations.

Further, this case illustrates the manner in which the Jammu and Kashmir Police favour the perpetrators of crimes over the victims involved.

Case No. 132Victim Details

Mehrajuddin Khanday [Extra-Judicial Killing (Custodial Killing)]
 Age: 21
 Occupation: Student
 Son of: Ghulam Nabi Khanday
 Resident of: Dethoo, Shangus, Islamabad District

Alleged Perpetrators

1. Major A.K. Morea, 7 Rashtriya Rifles [RR], Army, Camp Chakidaspora

Case Information

In November 2000, Mehrajuddin Khanday along with a person named Hilal Ahmad Teeli were summoned to the Chakidaspora Camp where they were tortured. A pistol was recovered from Hilal Ahmad Teeli. Mehrajuddin Khanday, found to have no links to militants, was released.

On 1 January 2001, Mehrajuddin Khanday was called once again to the Chakidaspora Camp by a “Major S.K.Mour” [in the petition filed before the High Court of Jammu and Kashmir, this camp is referred to as the “Chhati Singhpora” camp. In the petition the date of the incident is listed as 30 December 2000.

Further, in the status report filed by Station House Officer [SHO], Mattan Police Station, before the High Court it is stated that during investigations, witnesses, including the father of Mehrajuddin Khanday, referred to the date of the incident as 28.12.2000]. Mehrajuddin Khanday went to the camp along with his cousin, Ghulam Nabi Khanday who was working with the BSF, at about 11:00 am. The Major asked Ghulam Nabi Khanday to run an errand. On his return, Mehrajuddin Khanday was no longer at the camp. Ghulam Nabi Khanday was informed that he had been released.

On the following day, relatives of Mehrajuddin Khanday approached the Major to enquire about him. The Major informed them that Mehrajuddin Khanday had been released on the previous day and asked them to search for him elsewhere, including in the forests. On 5 January 2001 the family of Mehrajuddin Khanday filed a report at the Mattan Police Station.

On 12 January 2001 the body of Mehrajuddin Khanday was found in the Hutmura forest. According to the family of Mehrajuddin Khanday the body had numerous injury marks. No autopsy report was ever provided to the family.

Following the death of the victim, the family has received various threats from the army. The army personnel have also attempted to have the family sign a declaration that accepts that the army had no role in the killing of Mehrajuddin Khanday. The family

resisted these threats.

The family of Mehrajuddin Khanday received Rs.1,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders].

The family of Mehrajuddin Khanday gave a statement to the IPTK on 2 February 2012.

First Information Report [FIR] no. 18/2001 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition / possession / manufacture/sale of prohibited arms / ammunition] / 25 [Punishment for certain offences] Arms Act, 1959 was filed at the Anantnag Police Station on 12 January 2001 that an unidentified body was found in Hutmura forest with bullet injuries¹¹⁰. By communication dated 14 May 2012 from the Jammu and Kashmir Police information was provided that the case was chargesheeted but sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] against Major A.K. Morea was declined. A copy of the FIR was provided on 21 May 2012. By further communication dated 9 July 2012 from the Jammu and Kashmir Police, a copy of the 23 February 2009 decline of sanction for prosecution under AFSPA was provided. But, communication dated 16 November 2013 from the Jammu and Kashmir Police, while mentioning that the case was “sent” for sanction, does not mention the decline of sanction. A similar position is taken in communication dated 16 May 2014 where the following is stated [though written as 118/2001, it is presumably information related to this FIR]: “The investigation of these cases stands closed as challaned. The CD files along with relevant documents and evidence both oral and documentary stand submitted to concerned quarters for accord of sanction to prosecute or otherwise, the case is under investigation and as such, it comes under the purview of section 6(b) of Jammu and Kashmir Right to Information Act, 2009”.

This letter from the Ministry of Defence to the Jammu and Kashmir Home Department, states that the allegations against the alleged perpetrator are “totally false”. The letter states that the “killing of Jehangir Maulvi was a result of information given by Meraj-ud-Din Khandey”. “His visit to the Company post would have been observed by the subversive elements of village and could have misconstrued the visit otherwise”. The victim was sent back home on 30 December 2000 at 1:00 pm. “Terrorists and Over Ground Workers have made a desperate attempt to malign the officers and tarnish the image of the Army”.

On 26 May 2001, the Senior Superintendent of Police [SSP], Anantnag wrote a letter to the Deputy

Commissioner [DC], Anantnag. While stating that investigations were ongoing, the letter states that the killing was by unknown militants, but also that the Mehrajuddin Khanday was not affiliated with any banned outfit.

The family of Mehrajuddin Khanday filed a petition was filed before the High Court [Original Writ Petition (OWP) 54/2001] seeking a judicially monitored speedy investigation. The army accepted that Mehrajuddin Khanday was called to a post referred to as “Chak Ishar Dass” on 30 December 2000 but was subsequently released. Further, it was also accepted that Mehrajuddin Khanday was arrested on 10 November 2000 based on “information from intelligence agencies” but was released on the same day.

On 7 October 2003, the High Court was informed that the investigation in the case was complete and sanction for prosecution under AFSPA was being awaited before the submission of the chargesheet before the court. Based on this, the High Court sought information on the progress of sanction for prosecution under AFSPA.

On two further occasions, 21 February 2004 and 11 June 2004, the High Court continued to seek information on the situation of the sanction for prosecution sought under AFSPA. But, on 26 July 2004, with no developments on the issue of sanction for prosecution under AFSPA, the High Court dismissed the petition as being infructuous as investigations being completed¹¹¹.

The Ministry of Defence, in its affidavit before the High Court in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that sanction was declined vide order dated 23 February 2009.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under AFSPA, stated on 6 September 2011 in relation to this case that sanction was declined on 23 February 2009.

The Ministry of Defence, in response to a RTI on 10 January 2012 on sanctions for prosecution under AFSPA, stated in relation to this case that sanction was declined on 23 February 2009. Further, that: “officer not involved in killing. Attempt made by terrorists and sympathizers to malign the officer and tarnish the image of Army”.

There are certain discrepancies in the date of the event and the name of the alleged perpetrator.

While the Ministry of Defence and Government of Jammu and Kashmir sanction for prosecution under

110 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. Further information sought through RTI on 15 October 2013.

111 Information on the petition numbers was sought through RTI on 16 February 2012. Information was provided.

AFSPA documents refer to the alleged perpetrator as Major A.K. Morea, the family of the victim and the High Court documents refer to him as S.K. Mour or formulations of the same.

Further, the 2009 Ministry of Defence affidavit refers to the date of the event as 11 November 2000, whereas the 10 January 2012 Ministry of Defence document refers to the date as 30 December 2000. The family of the victim in the High Court petition place the incident on 30 December 2000 but it appears during investigations this may have been placed on 28 November 2000. Finally, there is also a discrepancy on the name of the Camp between the High Court petition and the statement given to the IPTK. But, these discrepancies appear minor particularly as there appears to be no dispute that Mehrajuddin Khanday was in the custody of the alleged perpetrator. The point of contention is only on whether or not he was released and role of the alleged perpetrator in his extra-judicial killing.

The Ministry of Defence decline of sanction of 23 February 2009 is a very important document which on the one hand acknowledges the responsibility of detaining Mehrajuddin Khanday and also gives an indication that he may have helped in giving information for the killing of Jehangir Moulvi.

The document also states that in this case terrorists and over ground workers have made an attempt to malign and tarnish the image of the army. In light of the fact that family members of Mehrajuddin Khanday hardly know the real name of Major A.K. Morea as they refer to him as S.K. Morea it is hard to imagine who the army is blaming for framing the said Major in this case which led to the maligning of the image of the army. It is the investigations of the Jammu and Kashmir Police that led to the framing of a case against Major A.K. Morea.

It needs to be ascertained whether the army by claiming that this case is an attempt by terrorists and sympathizers to malign the army is blaming the investigation and the Jammu and Kashmir Police for being sympathetic to terrorists. The approach of the army to shield the alleged perpetrator is amply demonstrated by the available documents that do not suggest that even a court-martial was conducted in this case by the army.

On the alleged release of Mehrajuddin Khanday the armed forces have facilitated the practice of illegal detentions and unrecorded "release" of victims which leads to an unaccountable detention followed by torture, disappearance, extra-judicial executions, fake encounters and sometimes release of victims in return for money.

The letter dated 26 May 2001 from the SSP, Anantnag is an example of the routine practice of the Jammu and Kashmir Police carelessly attributing blame to militants without any substantive evidence. The later

investigations of the police itself clearly establish that this letter was a mistake by a senior officer in the Jammu and Kashmir Police. Further, the 16 November 2013 communication suggests that the police is disorganized as it does not re-iterate the earlier position of denial of sanction.

Finally, the High Court while cognizant of the need for a judicially monitored investigation, initially monitored the issue of the outstanding sanction for prosecution under AFSPA. But, inexplicably after a few hearings the High Court absolved itself of any responsibility with regard to the sanction process and dismissed the petition.

Case No. 133

Victim Details

Nazir Ahmad Lone [Abduction, Torture, Extra-judicial killing (Fake encounter)]

Age: 25 years

Son of: Habibullah Lone

Resident of: Hakeem Gund, Ganderbal district

Alleged Perpetrators

1. Bashir Khanday, Government Gunman [Ikhwan]
2. Yousuf Kashu, Government Gunman [Ikhwan]
3. Shal Boug, Government Gunman [Ikhwan]
4. Farooq Laway, Government Gunman [Ikhwan]
5. Gagtar Singh, Deputy Superintendent of Police [DSP] Operations, Special Operations Group [SOG], Jammu and Kashmir Police

Case Information

Nazir Ahmad Lone was the only bread earner in the family. He was affiliated with the Jamaat-e-Islami. The victim was a private school teacher and was working in Gadura Public School, Ganderbal. On that day, he went to school as usual and later had to purchase some house hold things near Hospital Ganderbal, where, he was dragged by Ikhwan Bashir Khanday, Yousuf Kashu, Shal Boug, and Farooq Laway.

They kidnapped him and took him to police station Ganderbal, also the location of the Special Operations Group [SOG] camp.

DSP Gagtar Singh tortured him and handed him back over to the Ikhwan. Ikhwan Bashir Khanday killed the victim at Barosa. The family came to know about the killing the next morning from police station Ganderbal that sent a policeman to their house and informed them about the killing of the victim. The whole village protested against torture and killing of the victim.

The mother of the victim, Raja Begum, gave the above statement to the IPTK on 12 May 2015.

On record is FIR no. 2/2001 at Ganderbal Police Station filed by DSP Operations SOG and states that on the intervening night of 3/4 January 2001, the victim, a Pakistan trained militant, was killed and recovery of weapons was made. The SOG and the 5 Rashtriya Rifles [RR] carried out the operation. Further information on this FIR was sought through RTI dated 15 July 2015.

The above allegations are prima facie evidence against the alleged perpetrators. Yet, the statement is not detailed and the exact nature of torture by DSP Gagar Singh is not provided. It is also unclear if it was Gagar Singh who filed the FIR, though he does appear to be the DSP Operations. Further investigations are warranted. Most importantly, it is clear that the 5 RR personnel were also involved in this fake encounter. Their identities and role need to be established.

Case No. 134

Victim Details

1. Abdul Majeed Khan [Abduction, Torture and Extra-Judicial Killing]
Age: 45
Occupation: Chemist
Son of: Ghulam Mohammad Khan, Hanifa [deceased]
Spouse: Fata
Resident of: Khaipora, Tangmarg, Baramulla District
2. Mohammad Maqbool Rather [Abduction and Torture]
Occupation: Domestic work
Son of: Abdul Ahad Rather
Resident of: Kharnipora, Tangmarg, Baramulla District
3. Ashiq Hussain Mir [Abduction and Torture]
Son of: Ali Mohammad Mir
Resident of: Lonthipora, Tangmarg, Baramulla District

Alleged Perpetrators

1. Major K. Bhattachariya [Operational name: Waseem], 59th Field Regiment, Army, Camp Batapora, Tangmarg
2. Captain V. R. Godekar, 59th Field Regiment, Army, Camp Batapora, Tangmarg

Case Information

On 8 January 2001 Abdul Majeed Khan was picked up from his shop/residence by 32 to 40 army personnel of the 59th Field Regiment of Batapora, Tangmarg, headed by a Captain [who, according to locals in the area, was Captain Godekar]. It was about 4:00 p.m. The army personnel cordoned off the house, and then they took out all the family members from the house. The persons taken out were: Aisar Ahmad Khan,

younger son of Abdul Majeed Khan, Haneefa Begum, mother of the victim, Sarwar Begum, the victims sister, Sarwar Begum, the victims aunt, Mohammad Shafi, the victims cousin, and some other children. The army personnel then conducted a search of the house. Nothing was found in the search. They then told the victim to accompany them. The Captain assured the family that the victim would be released soon. The family of the victim, and village headman, Ghulam Nabi Tantray, accompanied the victim for about 1 kilometre until the Tantraypora village. Ghulam Nabi Tantray, also demanded the release of the victim but he was pushed aside. He was told that the victim was needed for some questioning. Two other persons were picked up that day: Ashiq Hussain Mir, resident of Lonthipora, and Mohammad Maqbool Rather, resident of Kharnipora.

The family of the victim waited till late evening but the victim was not released. The following day, the family contacted, Mushtaq Ahmad Khan, the brother of the victim, who was working as a Constable in the Jammu and Kashmir Police department. Specifically, he was working with a Deputy Superintendent of Police [DSP] in Pattan. Further, some family members also went to the 59th Field Regiment Camp in Batpora to enquire after the victim. Mushtaq Ahmad Khan also reached the camp when the other family members were there. They were told by an officer that no one had been arrested or detained at the camp. While the family was waiting outside the camp there was a rumor that a dead body had been found in the orchards at Hoom, Tangmarg. It was at about 9:00 a.m. in the morning when they received this news. They rushed to the site of the dead body and identified that it was the victim. There were burn marks on his face on both sides of his head which appeared to be electric burns. His thighs appeared to be burnt by a stove and his body was bluish and legs swollen. He had been severely tortured to death. The body was taken to Tangmarg for an autopsy. Meanwhile, the police from Tangmarg Police Station also arrived. The body was buried in the afternoon. Following investigations, where witnesses gave their statements before the court, the army started to harass them. On a few occasions, army personnel came to the residence of Abdul Majeed Khan and told them to withdraw the case. On one occasion, the wife and son of the victim, Rouf Ahmad Khan, were taken by the army to the Batpora camp. This was about a year after the killing. The Commanding Officer told them that if they did not withdraw the case, they would not be able to get any compensation. They refused to withdraw the case. Rouf Ahmad Khan was on two other occasions taken to the Hyderabad 10 Sector Headquarters where he was told to withdraw the case by a senior officer. Once again, he refused. Subsequently, in 2002 and 2008 the family received ex-gratia relief of Rs. 1 lac and compassionate employment under SRO-43 [Statutory Rules and Orders]. One and half years after the killing, 59th Field Regiment was shifted out from the camp to some other area.

Mohammad Maqbool Rather states that on 8 January 2001 there was an alarm in the village that there was a crackdown taking place. There was then the rumour that the army was chasing people away from the orchards. The villagers were also saying then that Ashiq Hussain Mir, son of "Ali Tailor" was being beaten in the orchards. Then, at about 11:00 a.m. some army men entered into the compound of Mohammad Maqbool Rathers house. There was a Company Havaladar Major [CHM] along with them whom Mohammad Maqbool Rather could recognize. Mohammad Maqbool Rather was already injured by this point. He had received nine bullets on both his legs and they were plastered. He believes he was shot at by militants because he used to supply commodities to the army. The army personnel entered and told him that "Major Sahib" was calling him to the Batpora camp. The code name of the Major was "Waseem". The army personnel then dragged him through the orchards [and not via the main road]. His legs, already injured, started bleeding. He was taken to a barracks in the Batpora camp. The Major, known as Waseem, was present there. He saw that Ashiq Hussain Mir had been hung by both his hands to the ceiling. He was being hit by thick wooden sticks. He was beaten for more than an hour. Then, he made a confession and he was taken by the army personnel for a raid. Mohammad Maqbool Rather believes that Ashiq Hussain Mir may have made a confession implicating Abdul Majeed Khan only to escape from the torture. After Ashiq Hussain Mir was taken away, Mohammad Maqbool Rathers hands were tied and he was then hung with his hands from the ceiling. He was then beaten by two army men with the wooden sticks. They hit his back repeatedly. Major Waseem also beat him. The beating continued until the raiding party returned along with Abdul Majeed Khan. Mohammad Maqbool Rather was brought down and Abdul Majeed Khan was then hung. Mohammad Maqbool Rather was kept on the side and he was able to observe the torture that followed. Major Waseem lit a stove and kept it under the thighs of Abdul Majeed Khan. His thighs and testicle were burnt for about 20 minutes. Major Waseem was asking him how many militants he knew and how many of them visited his shop, while the victim was pleading that he had no such information. Then he was brought down and then his body was trampled upon by the army men. The victim lost his consciousness. A doctor was called and he declared him dead. Then, once it was dark he was taken out of the barracks. By this time, Ashiq Hussain Mir had already been taken out of the barracks. Mohammad Maqbool Rather was given an injection by the doctor as he was continuously vomiting. The following day, the Deputy Commissioner, Baramulla and other officials visited the area. The DSP entered into the camp and took both Ashiq Hussain Mir and Mohammad Maqbool Rather out of the camp and dropped them at their villages. Mohammad Maqbool

Rather had a severe fracture in his backbone. He was in Barzulla Hospital for about a year but recovered only partly. Later, during investigations, he found out that the real name of Major Waseem was Bhattachariya. While he tried to process the case of relief after receiving nine bullets in his legs, he received no relief. He never tried to process any case for relief after his torture.

The son of Abdul Majeed Khan, and victim Mohammad Maqbool Rather gave separate statements to the IPTK on 10 April 2014.

First Information Report [FIR] no.3/2001 u/s 364 [Kidnapping/Abducting to murder], 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Tangmarg Police Station¹¹². The 22 May 2012 communication from the Jammu and Kashmir Police states that the case was still under investigation.

The post-mortem report dated 9 January 2001 states that the cause of death was: "...excessive internal bleeding in abdomen due to splenic rupture following blunt trauma to abdomen leading to haemorrhagic shock and cardiopulmonary arrest". The post-mortem also notes that there were marks of ropes tied around the wrists.

While the family filed a writ petition before the High Court of Jammu and Kashmir in 2001 [Original Writ Petition (OWP) 63/2001], it was subsequently withdrawn. Both alleged perpetrators were made party to the petition. In response to this petition, the State of Jammu and Kashmir and the Jammu and Kashmir Police stated that it is confirmed upon investigations conducted thus far that the victim was picked up by the personnel of the 59th Field Army Regiment camped at Batapora and that "they were involved in the murder of the deceased". Further, that the victim was not involved in any anti-national activity and the army was not co-operating in providing the names of officers involved in the incident. The post-mortem report states the probable cause of death as: "excessive internal bleeding in abdomen due to splenic rupture following blunt trauma to abdomen...". The High Court, taking cognizance of the position of the State and the police, issued an order on 13 August 2003 directing the army to cooperate in the investigation. But, on 30 July 2004, the court issued an order stating that the police should also make more efforts on its own part in getting information from the army. On 16 November 2002, the High Court allowed for an amended petition to be filed as the original petitioner [mother of the victim] had died, and an amended petition was sought to be filed by the wife of the victim.

Consequently, the amended petition was filed in 2004 [OWP 663/2004], seeking completion of

112 Information on the FIR number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 22 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

investigations and grant of relief from the authorities. Both the alleged perpetrators were made parties to the petition. The Union of India, the 59th Field Regiment and the alleged perpetrators responded to the petition on 24 August 2005 denying any role in the incident. Further, they stated that in Section 164 [Power to record statements and confessions] Criminal Procedure Code, 1989 [CrPC] statements recorded before the Pattan and Baramulla Magistrates, witnesses had stated that they were forced to give testimony against the army. But, on record, a statement given by Fayaz Ahmad Bhat, a neighbour of the victim, on 31 January 2001 before the Pattan Magistrate, confirms the version of events as given by the family of the victim. Similarly, a statement given by Haneefa, mother of the victim, on 31 January 2001 to the Pattan magistrate also confirms the abduction of the victim and subsequent killing of the victim. Abdul Majid Rather [Son of Ghulam Hassan Rather], a neighbour, also gave a statement on the same date to the Pattan Magistrate that once again confirms the abduction and killing of the victim. Mohammad Sharief Rather [son of Saifullah Rather], Mohammad Yousuf Khan [son of Shahbaz Khan], also neighbours, confirm the same details. Therefore, based on the documents available on the record, the statement of the Union of India, the 59th Field Army Regiment and the alleged perpetrators on 24 August 2005 in relation to statements before the Pattan and Baramulla Magistrates, would appear to be incorrect [though no statements before the Baramulla Magistrate are available with the IPTK]. The Government of Jammu and Kashmir and police authorities responded to the petition and stated that the personnel of the 59th Field Army Regiment were responsible for the abduction and killing of the victim. It was also confirmed that the victim was not involved in any anti-national activity. The High Court gave its final decision on this petition on 16 February 2006 and directed investigations by the police authorities, cooperation by the army, and also directed the Deputy Commissioner, Baramulla for relief and other benefits to be given to the family of the victim, if found eligible.

Subsequently, a contempt petition [no. 206/2006] was filed before the High Court against the non-implementation of the High Court decision of 16 February 2006. On 10 August 2006, after considering a status report by the police, the High Court stated that the Station House Officer [SHO] concerned with the matter is “not proving effective in causing the presence of the army personnel of the regiment and his party and the said regiment is not cooperating with the investigation of the case”. The court therefore ordered that the investigation be transferred to a senior police officer of the rank of Deputy Inspector General of Police [DIG]. The court also sought a response from the Deputy Commissioner, Baramulla [seemingly in reference to the issue of relief and other benefits]. On 23 December 2006 a status report on investigations was submitted by the DIG in charge of the investigations. The investigation concluded that the victim was picked up and killed by personnel of the 59th

Field Regiment, Batapora during interrogation. The investigation further revealed that on that day two other persons were picked up along with the victim: Mohammad Maqbool Rather and Ashaq Hussain Mir. All three were interrogated by Major Bhattachariya and Mohammad Maqbool Rather and Ashaq Hussain Mir state that serious injuries were caused to the victim which resulted in his death. The investigation therefore concludes against Major Bhattachariya but also states that the investigation has been unable to find the names of the party who actually picked up the victim. The investigation report states that a charge sheet has been filed against Major Bhattachariya. But, the report states that sanction is being sought and it appears from the wording of the report that the charge sheet has yet to be physically placed before the respective court. The contempt petition was dismissed on 6 September 2007 for want of prosecution.

Another contempt petition [no.411/2007] was filed on the issue of continued non-implementation of the direction on the relief [as the Deputy Commissioner, Baramulla had not filed his response before the High Court] and on the status of the sanction for prosecution sought. Subsequently, Deputy Commissioner, Baramulla submitted a response and stated that an enquiry by the Additional District Magistrate, Baramulla was conducted and based upon this report, relief of Rs. 1,00,000 had been paid to the family on 15 January 2002, but that compassionate employment under SRO-43 [Statutory Rules and Orders] were to be provided by chronological order based on the year of the event, and as the victims' death fell in the year 2001, it was yet to come up, but that a request for relaxation on this time issue had been submitted and a decision is awaited. The contempt petition was dismissed based on the submissions of the Deputy Commissioner, Baramulla.

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Information was provided. Information on petition number 206/2006 was sought again on 4 April 2014.

The National Human Rights Commission [NHRC] was also approached by the family.

The submissions before the High Court of the Jammu and Kashmir Police and the statements given to the Pattan Magistrate unequivocally implicate the 59th Field Army Regiment and Major K. Bhattachariya. The family of the victim, Abdul Majeed Khan, indicts Captain Godekar. Nonetheless, based on information available the alleged perpetrators do not appear to have been punished.

It is noteworthy that despite the passage of 11 years no progress appears to have taken place on the investigations.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 137Victim Details

Aashiq Hussain Akhoon [Abduction and Extra-Judicial Killing (Fake encounter)]

Age: 18

Occupation: Contractor, Kashmir Motor Drivers Association

Son of: Mohammad Yusuf Akhoon

Resident of: Ratharpura, Noorpora, Tral, Pulwama District [present address], Previously resident of Pinglish, Tral, Pulwama District

Alleged Perpetrators

1. Hans Raj Parihar, Deputy Superintendent of Police [DSP], Jammu and Kashmir Police
2. Inspector Narendra Singh Peshar, Jammu and Kashmir Armed Police [JKAP]
3. Constable Tariq Ahmad Chadro [operational name: Mushtaq], Special Operations Group [SOG], Jammu and Kashmir Police
4. Constable Fareed Khan, 1st Battalion, Indian Reserve Police [IRP]
5. Inspector Manjit Singh, 124th Battalion Border Security Force [BSF], D Company, Tral, Pulwama

Case Information

On 28 March 2001 the Aashiq Hussain Akhoon left for Tral, to the bank, to withdraw money as his family had purchased land in Bijbehara and the payment had to be made. After withdrawing money he headed towards Bijbehara.

On the way Aashiq Hussain Akhoon was picked up by DSP Parihar and the Rs. 48,000 he had withdrawn was taken away. On 1 April 2001 at about 4:30 am, the family of the Aashiq Hussain Akhoon heard two gunshots and subsequently the police was informed about the body of Aashiq Hussain Akhoon, which was taken to the Tral Police Station. The family of Aashiq Hussain Akhoon states that his body had clear torture marks.

The family of Aashiq Hussain Akhoon gave a statement to the IPTK on 16 February 2012.

First Information Report [FIR] no.25/2001 u/s 307 [Attempt to murder] and 7 [Prohibition of acquisition / possession / manufacture/sale of prohibited arms/ammunition]/27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 was filed at the Tral Police Station on 1 April 2001¹¹³. The 124th Battalion BSF in this FIR stated that the victim was killed in cross-fire between militants and armed forces. The BSF also

showed a recovery of arms from the victim. The Superintendent of Police [SP], Awantipora, in a letter dated 11 July 2001 accepts this version of events that the victim was a militant and a chargesheet was produced in court against the deceased person on 19 June 2001. Further, the communication dated 15 May 2012 from the Jammu and Kashmir Police states that there was an encounter between militants and security forces in Pinglish, Haffoo Nallah, during the night of 31 March 2001 and 1 April 2001 where a Hizbul Mujahideen militant Aashiq Hussain Shah, son of Mohammad Yousuf, resident of Pinglish got killed and huge quantity of arms and ammunition were recovered. Chargesheet was filed on 19 June 2001.

The mother of Aashiq Hussain Akhoon filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 164/2001]. Alleged perpetrators 2 to 5 were made parties to the petition.

The motive of the killing of the victim was believed to be money that the victim was carrying. The petition sought the completion of investigations, sanction to prosecute the alleged perpetrators, presentation of findings of inquiry if conducted, and compensation.

The Government of Jammu and Kashmir and police authorities responded before the High Court and stated that there were no employees by the names as listed for alleged perpetrators 2 to 4 with the Government of Jammu and Kashmir. Further, that the victim was, as per the FIR, an active militant, and compensation could therefore not be granted. Further, that no separate inquiry had been conducted. The Union of India and Inspector Singh submitted before the High Court and denied all knowledge of the killing of the victim.

On 26 September 2001, the High Court ordered that the victim's family be provided the necessary security, based on apprehensions to their safety as submitted by them before the High Court.

On 11 January 2004, the petition was dismissed in default of appearance.

The State Human Rights Commission [SHRC] was also approached by the family of Aashiq Hussain Akhoon.

The SHRC on 17 April 2001 directed the respondents to indicate whether ex-gratia government relief had been made and directed that exhumation and post-mortem should be done.

The final decision was given on 13 March 2002. Before the SHRC was a letter from the SP, Awantipora which confirmed the version of events as per the FIR

¹¹³ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 15 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. By further communication dated 9 July 2012, some investigation records were provided. Further information sought through RTI on 15 October 2013. By communication dated 7 November 2013 from the Jammu and Kashmir Police a copy of FIR and final report was provided.

and stated that a chargesheet was produced in court against the deceased person on 19 June 2001. Station House Officer [SHO], Tral Police Station also submitted a letter dated 19 May 2001 which concluded similarly. The SHRC then allowed the family of Aashiq Hussain Akhoon to produce witnesses.

Based on the witness testimonials, the SHRC concluded that Aashiq Hussain Akhoon was not a militant and had no connection to any militant organization. Rs.1,00,00 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders] benefits were recommended.

The family of the victim received no relief/compensation despite a letter dated 17 March 2003 from the Deputy Commissioner, Pulwama stating that Rs.1,00,000 ex-gratia government relief was to be granted.

The faulty, and possibly prejudicial, investigations by the Jammu and Kashmir Police are highlighted by the SHRC decision which bases itself on witness testimonials to find that Aashiq Hussain Akhoon was not a militant.

This conclusion of the SHRC raises serious questions on the investigations of the Jammu and Kashmir Police who appear to have conveniently accepted the version of the BSF rather than carry out fair investigations that might implicate fellow police personnel. Fair investigations would have included enquiries at the bank on details of money withdrawn by Aashiq Hussain Akhoon, and the subsequent trail of the money could have helped ascertain circumstances surrounding the killing of Aashiq Hussain Akhoon.

Of particular significance in the case of alleged perpetrator Hans Raj Parihar is that he was implicated in another case prior to this one, referred to in this report, and yet he received, as per publicly available information, the Director General of Police's Commendation Medal for 2001.

Case No. 138

Victim Details

Ghulam Rasool Lone [Abduction, Torture and Extra-Judicial Killing (Custodial Killing)]
Son of: Abdul Gani Lone
Resident of: Souch, Kulgam District

Alleged Perpetrators

1. Nisar Ahmad Dar, resident of Khudwani [presently in Territorial Army], Government Gunman [Ikhwan]

2. Muhammad Ashraf Wani [Operational name: Asif], resident of Bugam [presently in Territorial Army], Government Gunman [Ikhwan]
3. Shakeel Ahmad, [Operational name: Tiger], resident of Poniwah, Kulgam [presently in Territorial Army], Government Gunman [Ikhwan]

Case Information

On 12 April 2001, Ghulam Rasool Lone was on his way to his uncle's residence. He was tortured to death and later buried in the compound of the Kulgam Camp.

First Information Report [FIR] no. 96/2001 was filed at the Kulgam Police Station u/s 302 [Murder], 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC]¹¹⁴ on 17 April 2001, following information being provided on 14 April 2001. The FIR was filed by the victims brother, Ghulam Mohammad Lone. The FIR states that on 12 April 2001 the victim had gone to his mothers ancestral place. At 11:00 a.m., one renegade party from Ikhwan camp, Kulgam was patrolling. The victim was arrested by them. The victim was abducted by them. By communication dated 10 July 2012 from the Jammu and Kashmir Police, information was provided that the case was submitted to Crime Branch, Kashmir, for investigations vide order no.1254/2008 from the Police Headquarters on 10 April 2008. Communication dated 29 November 2013 also provided information that the CD file was handed over to Crime Kashmir vide DPO order no. CRB/3329-31 dated 12 March 2009 by the orders of Police Headquarters vide order no. 1254/08 dated 10 April 2008 for further investigations.

The State Human Rights Commission [SHRC] issued its final decision on 4 October 2007 recommending payment of Rs.2,00,000 ex-gratia government relief and that the investigations should be handled by the Crime Branch. On 30 June 2009, when the SHRC was once again seized of the matter, it was noted that a direction had been issued by the Director General of Police [DGP] for a Crime Branch investigation on 4 April 2008, about six months after the initial decision of the SHRC.

As reported in the media, on 21 April 2009, an application was moved by the Crime Branch, Kashmir before the Chief Judicial Magistrate [CJM], Kulgam for issuance of warrants under section 25 of the Police Act for the alleged perpetrators. The CJM, Kulgam directed the Commanding Officer of the 162nd Jammu and Kashmir Light Infantry [JAKLI], Wazir Camp posted at Qazigund to hand over the troops accused in the murder of Ghulam Rasool Lone during custodial interrogation. The prosecution

¹¹⁴ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. Further information sought through RTI on 15 October 2013. By communication dated 29 November 2013 from Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI dated 14 November 2014.

had submitted before the court that the concerned Commanding Officer was not cooperating with the investigation of the case against the accused and was stressing on interrogating the accused in the army camp only. The prosecution stated that when the FIR was lodged against the accused, they were part of the Ikhwan, so they could not be interrogated by the army¹¹⁵.

Based on the latest communication received through the Jammu and Kashmir Right to Information Act, 2009 [RTI] from the Jammu and Kashmir Police, it appears that investigations in the case remain pending with the Crime Branch, 11 years after the FIR was filed and four years since the Crime Branch investigations began. Nothing substantive with regard to prosecution of the alleged perpetrators has emerged.

Case No. 139

Victim Details

1. Mohammad Sultan Allaie [Extra-Judicial Killing]
Age: 60
Occupation: Farmer
Son of: Abdul Aaziz Allaie
Spouse: Khati Begum
Resident of: Waripora, Payeen, Kreeri, Pattan, Baramulla District
2. Ghulam Hasan Allaie [Extra-Judicial Killing]
Age: 28
Son of: Karim Allaie, Haja
Resident of: Waripora, Payeen, Kreeri, Pattan, Baramulla District
3. Haja [Injuries]
Mother of: Ghulam Hasan Allaie
Resident of: Waripora, Payeen, Kreeri, Pattan, Baramulla District
4. Meema [Injuries]
Age: 25
Spouse: Abdul Rashid Allaie
Resident of: Waripora, Payeen, Kreeri, Pattan, Baramulla District
5. Naseer Ahmad [Injuries]
Age: 8 months
Resident of: Waripora, Payeen, Kreeri, Pattan, Baramulla District
6. Other members of Village Waripora [Injuries]

Alleged Perpetrators

1. Captain Rajesh Sharma, 29 Rashtriya Rifles [RR], Army
2. Narender Singh, Naik, 29 Rashtriya Rifles [RR], Army
3. Hari Ram, Gdr, 29 Rashtriya Rifles [RR], Army
4. Deepak Godara, Gnr, 29 Rashtriya Rifles [RR], Army

5. Usman Ali, Gdr, 29 Rashtriya Rifles [RR], Army
6. Ajay Kumar, Gnr, 29 Rashtriya Rifles [RR], Army
7. Morpal Singh, Gdr, 29 Rashtriya Rifles [RR], Army
8. Hari Chander, Gdr, 29 Rashtriya Rifles [RR], Army
9. Bahadur Singh Tanwar, Naik, 29 Rashtriya Rifles [RR], Army
10. Rishi Pal Singh, Gdr, 29 Rashtriya Rifles [RR], Army
11. Kishan Pal Singh, Gdr, 29 Rashtriya Rifles [RR], Army
12. Avtar Kishan, Gdr, 29 Rashtriya Rifles [RR], Army
13. Satish Kumar, Gdr, 29 Rashtriya Rifles [RR], Army
14. Ramesh Kumar, Gdr, 29 Rashtriya Rifles [RR], Army
15. Chattar Singh, Gdr, 29 Rashtriya Rifles [RR], Army
16. Sudhama Singh Yadav, Havaladar, 29 Rashtriya Rifles [RR], Army
17. Anil Kumar, Gnr, 29 Rashtriya Rifles [RR], Army
18. Anil Kumar Thakur, Gnr, 29 Rashtriya Rifles [RR], Army
19. Kamal Singh, Gdr, 29 Rashtriya Rifles [RR], Army
20. BN Das, Lance Havaladar, 29 Rashtriya Rifles [RR], Army

Case Information

On 13 April 2001 the personnel of 29 RR patrolled the Waripora village. Later in the night at 11:30 pm they attacked the village. The firing continued till the morning of 14 April 2001 at about 6:00 am. Mohammad Sultan Allaie was killed as he got up from his bed and tried to go to the next room where other members of his family were. He cried out and that was when Ghulam Hasan Allaie, nephew and neighbor of Mohammad Sultan Allaie, came out to see what was happening. As he looked outside, he was shot dead. His sister-in-law, Meema, mother, Haja, and nephew, Naseer Ahmad family suffered injuries.

In the morning all the male villagers were taken out naked and beaten. Subsequently there were wide protests, joined by other adjacent villages as well.

There was also an incident of rape during the events the details of which are not available with the IPTK.

A person who witnessed the events has informed the IPTK, under a condition of confidentiality of his identity, that he heard a conversation during the incident where a person named "Rampal Singh" told another named "Rajesh Sharma" not to shoot that much.

115 Greater Kashmir, <http://www.greaterkashmir.com/news/2009/Apr/22/cjm-directs-army-to-hand-over-ta-men-41.asp>, 21 April 2009.

The family of Ghulam Hasan Allaie gave a statement to the IPTK on 12 December 2011.

FIR no.39/2001 u/s 302 [Murder]Ranbir Penal Code, 1989 [RPC] was filed at the Kreeri Police Station¹¹⁶. By communication dated 22 May 2012 from the Jammu and Kashmir Police, and specifically the Deputy Superintendent of Police, District Police Headquarters, Baramulla, information was provided that the case was closed by declaring the perpetrators as untraced. It was further stated that the FIR was misplaced. By communication dated 30 November 2013 a copy of the FIR was provided, along with certain medical documents. The FIR was filed on 14 April 2001 and it lists the incident as being on the intervening night of 13/14 April 2001. The FIR states that there was a crackdown by the personnel of the 29 RR, “Yadipora” camp. Mohammad Sultan Allaie and Ghulam Hasan Allaie were killed in one room [which appears to contradict the version by the family of the victims]. A boy and a woman were also injured.

By communication dated 22 April 2014 from the Jammu and Kashmir Police a copy of the FIR in the case and certain investigation related documents were provided. The closure report was not provided. The list of 19 army personnel was provided. This list was provided by the 29 RR itself and is the list of the party involved. By communication dated 6 January 2015 information was provided that this case was finally sent for sanction. Further, the army filed FIR no. 40/2001 that was closed as not admitted on 28 July 2001.

Also on record are the death certificates and post-mortems of Mohammad Sultan Allaie and Ghulam Hasan Allaie. Both are listed as being killed by gun shot injuries.

A case was filed on behalf of both families before the State Human Rights Commission [SHRC].

Deputy Commissioner, Baramulla intervened on behalf of Mohammad Sultan Allaie's family and they received Rs.1,00,000 ex-gratia government relief.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that sanction was declined for Captain Rajesh Sharma vide order dated 25 March 2009. Further, this document provides some incorrect/incomplete details of the incident as it states that this incident involved the abduction and death in military custody of a “Mohd Sultan and Hassan Allaie” on 14 April 2001. The denial of sanction document

states that two civilians were killed in cross-firing. Further, that the woman who had alleged rape has “withdrawn” the FIR she filed vide an affidavit that she had given a false statement because of pressure of “terrorists”.

The Government of Jammu and Kashmir, in response to information sought under the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction for Captain Rajesh Sharma and 19 other Officers of the 29 RR was declined on 25 March 2009.

This case is an example of indiscriminate collective punishment and a systematic attack meted out to the villagers in which the Jammu and Kashmir Police investigations apparently limited itself to the extra-judicial killings of two persons only. It is not clear why the police in their investigations have not charged the army unit for the other crimes committed at the village.

The decline of sanction for prosecution in a case like this is indicative of the fact that there is institutional support for such operations that are effectively collective punishments. The very use of the “affidavit” by which a FIR can be withdrawn to decline sanction is indicative of the real purpose of the sanction process.

The available documents do not suggest that even a court-martial was conducted in this case by the army.

Further, this was a fit case for the Jammu and Kashmir Police to stand by its investigations and agitate the decline of sanction for prosecution. Instead, they chose to mechanically close the case by declaring the perpetrators as untraced. Interestingly, sanction is denied and in addition the army FIR is also closed as not admitted.

It needs to be investigated how the FIR was misplaced, presumably at both the District Police Headquarters and the Kreeri Police Station, in this case by the Jammu and Kashmir Police. The investigations would need to ascertain whether this is a case of negligence or an attempt to cover up the matter.

Case No. 140

Victim Details

1. Mohammad Arshad [Abduction and Extra-Judicial Killing]
Age: 25
Son of: Jamal Din
Resident of: Hari Budda, Mandi, Poonch District
2. Munshi Khan [Abduction and Extra-Judicial

¹¹⁶ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

Killing]
 Son of: Wazir Mohamad
 Resident of: Hari Budda, Mandi, Poonch District

Alleged Perpetrators

1. Captain Kunal Bakshi, 17 Rashtriya Rifles [RR], Army
2. Subedar Kalayan Singh, 17 Rashtriya Rifles [RR], Army
3. Subedar Paandurung, 17 Rashtriya Rifles [RR], Army
4. Havaladar Maani Dutta, 17 Rashtriya Rifles [RR], Army

Case Information

On 29 April 2001, Mohammad Arshad, Munshi Khan, Mohammad Rashid, Mohammad Asian, and Hakim Din were taken to the forest by the alleged perpetrators. Mohammad Arshad and Munshi Khan were killed, whereas the others managed to escape.

First Information Report [FIR] no.21/2001 u/s 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Mandi Police Station. Further information sought through RTI dated 14 November 2014. The case was chargesheeted against the alleged perpetrators u/s 364 [Kidnapping / Abducting to murder] and 302 [Murder] Ranbir Penal Code, 1989 [RPC], and on 25 January 2004 it was transferred to the army Court-Martial. Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 15 October 2013.

The State Human Rights Commission [SHRC] was approached and on 6 June 2008 a final decision was given.

The report of the Director General of Police [DGP], Jammu and Kashmir dated 17 December 2007 was considered, which confirmed the abduction, killing and the role of the alleged perpetrators.

The SHRC recommended Rs.1,50,000 ex-gratia government relief to the next of kins of the victims.

Despite an indictment by the SHRC of the alleged perpetrators, and information that the case was sent for an army Court-Martial, the available documents relating to court-martials of RR personnel in Jammu and Kashmir do not refer to this case.

Therefore, it appears that absolute impunity has been ensured for the alleged perpetrators.

Case No. 141

Victim Details

Showket Hussain Mir [Extra-judicial killing]

Age: 25
 Occupation: Businessman and Owner of Brick Kiln
 Son of: Ghulam Rasool Mir
 Resident of: Waterwani, Budgam district

Alleged Perpetrators

1. Ghulam Hassan Baba, Government Gunman [Ikhwan]

Case Information

Showket Hussain Mir was the owner of a brick kiln. An Ikhwan, namely Ghulam Hassan Baba, son of Mohammad Qayoom, resident of Kadipura, Budgam demanded money from Showket. On another occasion, he [Ghulam Hassan Baba] also demanded bricks from Showket for constructing his house. He would threaten Showket that he would kill him if Showket did not give him money. Showket had not shared these incidents with his family. But in April 2001, when Ghulam Hassan Baba asked for money again, he refused and went home and told his family all about the threats. But they did not take him seriously.

A few months later, at about 9:45 pm on 3 July 2001, Showket was in the office of his brick kiln. The army, along with Ghulam Hassan Baba, came to his office and told him that the army had cordoned the area and so he should go home. However, there was actually no cordon; it was just Baba's conspiracy to kill Showket.

Showket left his office but as he took a few steps he was shot. Showket received nine shots all hit below his abdomen. After he was shot, army personnel took him to the sub-district hospital Budgam but he bled to death on the way.

The army took two other boys Manzoor Ahmad Mir and Ijaz Ahmad Mir of the same village while they were irrigating their fields. They were abducted when the army was going towards the kiln of Showket. When Showket was killed, those two boys were kept in the army truck. Later, the two boys, upon their release, shared all this information with the family of Showket. They had also seen Ghulam Hassan Baba with the army.

When Showket was shot, the family could hear the noise of firing, so, they rushed towards the kiln as the noise came from that area. When they reached the kiln, they saw the victim's lunch box on the ground. A few steps ahead, they saw his wallet on the ground. They searched for him but couldn't find him. They returned home but couldn't sleep because they suspected that the army might have abducted him.

The next morning, they went to Budgam police station and the 12 RR army camp. At the army camp, they came to know that Showket had been killed. The army handed over the dead body to Jammu and Kashmir

Police Budgam. The family then received his dead body from Police Station Budgam.

Ghulam Hassan Baba was known for threatening people for money. After Showket's death, the police, on the directions of Moulana Iftikhar Ansari, arrested him. But after a few days, he was released again.

The family never dared to file a case against the army or Ghulam Hassan Baba because of they feared for their lives; if anyone would file a case against the army, they would be killed.

Unidentified gunmen at Nasrullah Pur later killed Ghulam Hassan Baba.

The father of the victim, Ghulam Rasool Mir, gave the above statement to the IPTK on 14 March 2015.

The victim's statement is clear, and cogent evidence is presented of the extra-judicial killing by the alleged perpetrator. There are also eye-witnesses whose testimony may be recorded. The role of the army though requires further investigations.

Case No. 142

Victim Details

1. Abdul Ghani Bhat [Abduction, Torture and Extra-Judicial Killing (Custodial Killing)]
Age: 35
Occupation: Farmer
Son of: Fateh Bhat
Resident of: Monghama, Tral, Pulwama District
2. Ishrat Amin Bhat [Injuries]
Age: 26
Daughter of: Mohammad Amin Bhat
Resident of: Monghama, Tral, Pulwama District
3. Bilal Ahmad Reshi [Injuries]
Age: 28
Son of: Ghulam Nabi Reshi
Resident of: Tral bus stand, Pulwama District

Alleged Perpetrators

1. Sub-Inspector [SI] Bawani Singh / Bhagwan Singh, 124th Battalion Border Security Force [BSF], Camp Batagund Dambal, Tral
2. Constable Ram Naresh, E Company, 124th Battalion / attached to the 173rd Battalion, Border Security Force [BSF], Camp Batagund Dambal, Tral

Case Information

On 9 July 2001 at around 4:00 pm Abdul Ghani Bhat was working on his fields along with other persons. BSF personnel from the Batagund Dambal Camp attacked the farmers and beat them severely. Abdul

Ghani Bhat managed to escape to his house. The BSF personnel next arrived at his house and abducted Abdul Ghani Bhat. When the family of Abdul Ghani Bhat approached the camp the BSF personnel denied the abduction.

The same night the BSF personnel returned with Abdul Ghani Bhat to his residence for search operations. Following the operation Abdul Ghani Bhat was once again taken back to the camp.

The family approached the police station and subsequently the FIR was filed.

On 11 July 2001 the body of Abdul Ghani Bhat was found at Chachkote, Awantipora. The dead body bore visible torture marks. The Station House Officer [SHO] of the Tral the Police Station had earlier attributed the abduction to a Sikh officer of the BSF.

The BSF personnel exerted great pressure on the family of Abdul Ghani Bhat to withdraw the case.

The family of Abdul Ghani Bhat was given Rs. 1,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders].

On 11 July 2001, the villagers conducted a protest march against the abduction and killing of Abdul Ghani Bhat. As the protestors were moving towards Awantipora, they were fired upon by the BSF personnel of the Batagund Dambal Camp. The firing was done by Constable Ram Naresh. Ishrat Amin Bhat and Bilal Ahmad Reshi were injured in this shooting. Both are permanently handicapped. Ishrat Amin Bhat was shot in her arm and Bilal Ahmad Reshi on his hand.

The BSF personnel exerted great pressure on both families due to which they signed declarations accepting that the BSF had no role in the incident.

Additionally, the father of Bilal Ahmad Reshi, in his statement to the police did not attribute the firing to the BSF.

The family of Ishrat Amin Bhat accepted Rs. 7000 from a Major of the BSF. The Major told the father of the victim that not all officers were good and that if he refused to compromise he could be taken to the Camp, forced to hold a gun, have a picture taken and be labeled a militant. The family of Bilal Ahmad Reshi received Rs. 70,000 in compensation from the Government of Jammu and Kashmir. The family of Ishrat Amin Bhat received Rs. 60,000 in compensation from the Government of Jammu and Kashmir.

The family of Ishrat Amin Bhat and Bilal Ahmad Reshi gave statements to the IPTK on 6 February 2012.

First Information Report [FIR] no. 66/2001 u/s 302

[Murder], 342 [Wrongfully confining person] Ranbir Penal Code, 1989 [RPC] was filed at the Tral Police Station in relation to the killing of Abdul Ghani Bhat¹¹⁷. By communication dated 19 May 2012 from the Jammu and Kashmir Police information was provided that the case was registered on 10 July 2001 upon the written report of a village guard Monghama, Tral namely Ali Mohammad Bhat and pertains to illegal confinement and death of Abdul Gani Bhat, son of Fateh Bhat, resident of Monghama, by Sub-Inspector Bawani Singh of the 124th Battalion BSF during custody. Investigation was closed as chargesheeted and sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] was sought but subsequently denied. Based on this letter the police claims that investigations are ongoing.

The Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction was sought from the Ministry of Home Affairs for the “BSF Camp 124 Battalion Batagund, Tral” but it was declined on 8 April 2008. The name of Sub-Inspector Bawani Singh is not mentioned in this document.

Also on record is that the 124th Battalion BSF confirmed in a certificate issued on 16 July 2001 that Abdul Ghani Bhat had no connection to any militant activities.

By further communication from the Jammu and Kashmir Police dated 9 July 2012, a copy of the FIR was provided.

Further, a copy of the decline of sanction letter was provided. The decline of sanction refers to SI Bhagwan Singh and states that sanction was sought on 20 July 2007. This letter places the alleged incident on 24 July 2001. The entire incident and the role of the BSF is denied. It is stated that the Judicial Magistrate, Tral opined that the FIR in this case is baseless as on 9 July 2001 the victim was not apprehended by the BSF. Further, a letter of the Inspector General of Police [IGP], Kashmir is referred to which states that sufficient evidence was not found against Bhagwan Singh and he was implicated only on the grounds that at the relevant time he was Company Commander of the Batagund Company of the BSF.

First, it is noteworthy that it took the Jammu and Kashmir Police, Government of Jammu and Kashmir and Ministry of Home Affairs seven years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

Second, contrary to other documents on record, the Ministry of Home Affairs has denied the allegations by referring to the seemingly wrong date of 24 July 2001.

Finally, the investigations of the Jammu and Kashmir Police, particularly the opinion of the IGP, Kashmir, would need to be scrutinized and verified whether the perpetrators of the crime have evaded justice due to deliberately faulty investigations.

FIR no.101/2001 u/s 307 [Attempt to murder] and 7 [Prohibition of acquisition / possession / manufacture/sale of prohibited arms / ammunition] / 27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 was filed at the Awantipora Police Station in relation to the second incident.¹¹⁸ By communication dated 19 May 2012 from the Jammu and Kashmir Police the information that was provided states that the case pertains to firing at Nowdal upon a peaceful procession which was on its way to Awantipora from Tral on 11 July 2001 by Constable Ram Naresh without any provocation resulting in bullet injuries to Ishrat Amin Bhat and Bilal Ahmad Reshi. Offences were proved, and chargesheeted before the court on 24 January 2008 after seeking government sanction for prosecution under AFSPA.

But, contradicting what the police appear to suggest [that sanction may have been granted] the Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction was declined by the Ministry of Home Affairs on 11 July 2007.

Further, on record is that a trial by the Security Force Court was conducted in 2009. The results of the Security Force Court proceedings are not known. By further communication dated 9 July 2012 from the Jammu and Kashmir Police, a copy of the FIR was provided. By communication dated 7 November 2013 a copy of the final report and a request for sanction letter dated 21 April 2005 from Superintendent of Police, Awantipora to Deputy Inspector General of Police, South Kashmir Range, Anantnag, was provided. This letter states that vide letters dated 12 October 2001, 20 February 2002, 12 June 2002 and 21 April 2004, sanction was sought and the case diary [CD] file sent. But, the CD file was returned vide letters dated 27 December 2001 and 25 February 2002 for removal of some observations. The CD file was finally submitted back to the senior police authorities by letter dated 9 July 2002 but was again received back vide letter dated 5 February 2005 with reference to the Home Department letter dated 5 October 2004 for rectification of “some observations” raised by Central Bureau of Investigations [CBI], New Delhi.

117 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

118 Information on this FIR was sought through RTI on 7 October 2011. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

Once again, it is noteworthy that it took the Jammu and Kashmir Police, Government of Jammu and Kashmir and Ministry of Home Affairs six years in total [and four years for sending the request for sanction] to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

The IPTK sought information on 10 January 2012 on all inquiries and court-martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir. No information was provided.

Case No. 143

Victim Details

Latief Ahmad Ganie [Abduction, Extra-judicial killing]
Occupation: Student
Son of: Mohammad Ganie
Resident of: Machua, Beerwah, Budgam district

Bashir Ahmad Khan [Abduction, Extra-judicial killing (Fake Encounter)]
Occupation: Student
Son of: Fateh Khan
Resident of: Chant Mohalla, Bandipora district

Alleged Perpetrators

1. DJ Singh, 33 Rashtriya Rifles [RR], Kangan Camp
2. Dhan Prasad Gurung, Naik, 2/8 Grenadiers

Case Information

The mother of the victim, Khurshi, filed a writ petition OWP 220/2002 before the Jammu and Kashmir High Court, Srinagar¹¹⁹. Respondents to the petition include the 56th Battalion Central Reserve Police Force [CRPF], Special Operations Group [SOG], Jammu and Kashmir Police, 33 Rashtriya Rifles [RR], and the following private persons: Rafiq Rishi, son of Ghulam Mohammad Rishi, resident of Habak, Hazratbal Dargah, Srinagar, Ghulam Nabi Rishi, son of Ghulam Mohammad Rishi, resident of Habak, Hazratbal Dargah, Srinagar, and Mohammad Rishi, son of Ghulam Mohammad Rishi, resident of Habak, Hazratbal Dargah, Srinagar. Khurshi submitted that her son was a student. He, along with the other victim, was arrested on the intervening night of 24 and 25 September 2001 during a joint raid conducted by the army and police at her residence. Thereafter, it is submitted that the two victims were killed at Gogar Basti, Bareek Hawan, Ganderbal. The family of the victim Latief Ahmad Ganie visited the Ganderbal police station seeking their intervention but to no avail. The reality, unlike what is stated in the army FIR, is that the civilians added as respondents had a dispute with the parents of the victim regarding an adjacent plot of land. The father

of the victim refused to sell that land. The civilian respondents threatened the father of the victim. It was these people who connived with the forces and ensured the abduction of the victim.

Besides the above petition, also on record is the FIR in this case. DJ Singh of the 33 Rashtriya Rifles [RR], based at Kangan, filed FIR No. 103/2001 at Police Station Kangan. The FIR states that, on 28 September 2001, there was information of the presence of 3-4 foreign militants along with a local guide in "Gaggar Basti", Hari Ganiwan. Acting on this information, personnel of the 33 RR [58 Gurkha Rifles], SOG, Ganderbal and Alpha, 56th Battalion CRPF, Ganderbal [in a different copy of FIR it seems as if it is actually the 156th Battalion, CRPF] carried out a joint operation that was launched at 3 am on 29 September 2001. This led to the killings of the militants. Further information on this FIR was sought through RTI dated 15 July 2015.

By order dated 20 August 2004, the High Court stated that the Ganderbal police had to investigate the FIR. With this order, the petition was disposed off.

What may be analyzed in this case though is the response of the army. The 33 RR responded to this petition on 19 March 2004. In this response, the 33 RR stated that its jurisdiction was in Kangan and part of Ganderbal Tehsil. They had never operated in Beerwah. The allegations were denied. The response then states that during the joint operation of 29 September 2001, two "terrorists" were killed and huge amounts of arms and ammunitions were recovered. **The dead bodies were initially identified by the documents recovered and handed over to the police station at Kangan.** On 24/25 September 2001, all companies of the 33 Rashtriya Rifles [58 Gorkha Rifles] operated in their own area and no party went to Manchhama, Beerwah. Further, the next of kin of the deceased had lodged no FIR. A copy of a certificate from the Kangan Police Station is annexed which states that no FIR was filed by the relatives of either of the two victims against the 33 RR Camp Kangan up till 19 March 2002, the date of the certification. Further, that there was no encounter at Gaggar Basti, "Bareek Hawan". It was stated that information regarding the presence of 3-4 militants along with one guide in the twin villages of Hari Ganiwan and Sura Pherao was received from SOG, Ganderbal. Then joint parties of SOG, Ganderbal, 33 RR and Alpha Company of 65 Battalion CRPF laid a crackdown at the suspected houses of the aforementioned twin villages. This was done at 4 am on 29 September 2001. At about 4:45 am, suspicious movement was observed and challenged and then shots were fired. The joint party retaliated and the fighting continued for about 45 minutes. On a search, two dead bodies were found with arms and ammunition. Through documents, the two dead bodies were identified to be those of "Abu Ayub alias Gulfam" and "Abu Hafiz".

119 Information on this petition was sought through RTI dated 15 July 2015.

But in the very next paragraph, the response states that “investigation has revealed that two persons killed on 29 September 2001 under the jurisdiction of police station Kangan were terrorists and got killed in an encounter and two of their accomplices escaped into the jungle. It is only a matter of chance that foreign militants managed to escape while local militants possibly carrying loads got killed in the early morning encounter”.

Therefore, on one hand, it is claimed that based on unspecified “documents” the identity and names of the foreign militants were ascertained and they were foreign militants. Yet, in response to the family claim that they are locals the army now accepts that but states that they were militants possibly carrying loads, and that the foreign militants escaped.

Another contradiction comes, once again, from the army itself. This contradiction is brought out by two annexed documents. The first is a certification from the Sarpanch and Numberdar. This is dated 19 March 2002 and signed by Numberdar of village “Har Ganiwan” Fakar-ud-din Punch and Sarpanch of village “Har Ganiwan” Sahazan Zahava. This certification states that there was an encounter between security forces and terrorists on 29 September 2001. Two terrorists of Lashkar-e-Toiba had been killed. This is contradicted by another annexed document – communication dated 29 September 2001 from the 33 RR to the Kangan Police Station for the filing of FIR. Here, the two terrorists killed are identified as being from the militant group “Al Badr”. Therefore, while the first certificate claims they were from Lashkar-e-Toiba, the army claims they were from Al Badr.

Also annexed to the response are two Situation Reports [SITREPS] for 24 and 29 September 2001. The first SITREP makes no mention of the 33 RR at the residence of the victim no.1. The legal value of such a document is little, if at all any. The accused is essentially presenting a document, under his control, for proof that a crime was not committed. The possibility that a crime would actually be noted in such a document is absurd. The second SITREP details the encounter itself on 29 September. Here, details are provided on the manner in which Naik Dhan Prasad Gurung flung a grenade during the operation, which killed one of the terrorists, and then shot the other terrorist as he was trying to escape. It is also stated that his parent unit “2/8 GR” deserves commendation for exemplary devotion to duty and raw courage displayed in elimination of two foreign terrorists.

The Jammu and Kashmir Police recognize the falsity

of the army version of events. In their communication dated 12 April 2002 to the State Human Rights Commission, the Inspector General of Police [IGP] Kashmir Zone states that on 1 October 2001, Ghulam Mohammad Ganie and Muneer Ahmad Khan moved an application before the Deputy Commissioner, Srinagar for exhuming the bodies buried in the graveyard. They were exhumed and identified as the victims. The bodies were then handed over to the relatives. The case is under investigation.

The above information, particularly the response of the army in the High Court strongly suggests that this was a fake encounter. The role of the civilians alleged to be involved in this case would need to be more properly investigated.

Case No. 144

Victim Details

Abdul Gani Ganai [Torture and Extra-Judicial Killing]
Occupation: Government employee
Spouse: Zooni
Resident: Kralpora, Kupwara District

Alleged Perpetrators

1. Major S. Bhattacharya, 42 Rashtriya Rifles [RR], Army, Camp Kralpora

Case Information

On 22 December 2001 at about 10:30 pm, Major S. Bhattacharya entered the residence of Abdul Gani Ganai and tortured him. The victim died as a result of the torture. During the torture, the wife of the victim and his children were kept in a separate room.

First Information Report [FIR] no.160/2001 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Trehgam Police Station¹²⁰. The communication dated 6 January 2012 also states that the investigations in this case had been closed as chargesheeted, sent for sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] which was declined. The detailed report from Station House Officer [SHO], Police Station Kralpora states that investigations were carried out, seven empty cartridges of AK-47 were seized from house of victim, and statements recorded. Investigations confirmed the role of the alleged perpetrator. There is also mention of FIR no. 158/2001 u/s 307 [Attempt to murder] and 7 [Prohibition of acquisition / possession / manufacture / sale of prohibited arms/ammunition]/27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 that was filed at the Trehgam Police Station,¹²¹

¹²⁰ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 6 January 2012 a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. By communication dated 24 December 2013 a report from SHO, Police Station Kralpora was provided. By communication dated 25 April 2014 the copy of the FIR was once again provided. Further, the decline of sanction letter and a communication dated 18 November 2011 from Chief Prosecuting Officer [CPO], Kupwara to Deputy Superintendent of Police [DSP], Kupwara was provided.

¹²¹ Further information sought through RTI dated 14 November 2014.

by the alleged perpetrator which was closed as not admitted. It is stated that sanction was sought but declined by Ministry of Defence. This report ends by stating that “As per directions of CPO Kupwara the challan of the case will be produced before the Honble Court of law as and when AFSPA is repealed or revoked.”

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that it was received in September 2008 and was under consideration.

The Ministry of Defence, in response to an RTI on sanctions for prosecution under AFSPA stated on 10 January 2012 in relation to this case that sanction had been declined. Further, that: “the individual killed was a militant from whom arms and ammunition were recovered. The operation was conducted based on the specific information provided by i/c [In-charge] police post, Kralpora. All the witnesses examined by the police are family members or close relatives of the individual killed.”

By communication dated 9 July 2012 from the Jammu and Kashmir Police, a copy of the 2 February 2011 decline of sanction letter was provided.

This letter states that sanction was sought from the Government of Jammu and Kashmir vide letter dated 20 June 2007.

Sanction was declined as the witnesses were close relatives, family members of the deceased or over-ground workers of militant organizations. Mention is also made of witness Tahir Ahmed Malik who is stated to have deposed to the innocence of the victim and that he did not accompany the army during the operation. This witness was said to have been in judicial custody and therefore unreliable as a witness.

Further, it was stated that information relating to the investigation of FIR no.158/2001 was suppressed. The firing between the victim and the army was not reflected in investigations on FIR no.160/2001. This is blatantly incorrect as is apparent from the SHO, Kralpora Police Stations report where it is clear that FIR 158/2001 was disregarded following investigations.

The allegation against the alleged perpetrator is of the death of the victim due to torture and not of an encounter.

The response of the Ministry of Defence that Abdul Gani Ganai was a militant does not address the issue of torture at all and is misleading.

Even assuming the position of the Ministry of Defence that Abdul Gani Ganai was a militant, Major Bhattacharya would still be guilty of the crime of torture.

Also, the Ministry of Defence has used an inexcusable argument ungrounded in the law that the witnesses examined by the Jammu and Kashmir Police are family members or close relatives of Abdul Gani Ganai.

Similarly, the other reasons given for decline for sanction appear baseless.

Further, it is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir at least six years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice. Most importantly, the 18 November 2011 communication from CPO, Kupwara to DSP, Kupwara is evidence of the seriousness of the administration towards human rights violations. This communication, following decline of sanction, states that as there is no time limit for the filing of a chargesheet [as the offence carries punishment of life or death], the case file should not be closed at this juncture, and, as and when, AFSPA is repealed or revoked, the chargesheet may be presented before a court. Firstly, the chargesheet should have been filed as the conclusion of the investigations. Secondly, rather than wait for AFSPA to be revoked, Government of Jammu and Kashmir should invest itself in legally challenging the denial of sanction before the higher court.

Case No. 145

Victim Details

Nazir Ahmad Bhat [Extra-Judicial Killing]

Age: 21

Occupation: Chemist/Student

Son of: Nizamuddin Bhat

Resident of: Harpora, Naidkhai, Sumbal, Bandipora District

Alleged Perpetrators

1. Constable Gorakhnath Gwali, 88th Battalion, Border Security Force [BSF], Camp Iqbal Market, Sopore, Baramulla District

Case Information

The family of Nazir Ahmad Bhat states that on 29 December 2001 as soon as the victim reached the Iqbal market, Sopore, he was stopped by personnel of the 88th Battalion of the BSF and asked to assist them in carrying a box to the second floor of the BSF camp. On entering the camp, Nazir Ahmad Bhat was searched, and all his personal belongings, including his identity card and money were taken away by the BSF, particularly by Constable Gorakhnath Gwali. The victim was then forced to wear a BSF uniform and locked into a room. Gun powder was thrown on his body and he was set on fire. Nazir Ahmad Bhat

managed to jump out of a window and he screamed in Kashmiri for help from the people in the market. He was rescued by the people in the area and taken to a hospital where he succumbed to his injuries on 9 January 2002.

During his stay in the hospital he narrated his version of events to others. The family states that subsequently it has come to be known that Constable Gorakhnath Gwali had an insurance policy of Rs. 26,00,000, and had engineered to kill the victim with his uniform on, and minus his identity documents, so as to claim the money under the policy. Constable Gorakhnath Gwali is yet to be arrested.

The family of Nazir Ahmad Bhat gave a statement to the IPTK on 19 December 2011.

First Information Report [FIR] no. 339/2001 u/s 302 [Murder], 307 [Attempt to murder], 392 [Robbery] Ranbir Penal Code, 1989 [RPC] was filed at the Sopore Police Station.¹²²

The family of Nazir Ahmad Bhat also state that a case was filed in the High Court. Further, proceedings were also ongoing in a Baramulla court.

On 30 October 2002, after being approached by the family of the victim, the State Human Rights Commission [SHRC] issued a decision where it recommended ex-gratia government relief of Rs. 2,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders] to the family. The family states that they have received only Rs. 1,00,000 to date, but they did receive compassionate employment under SRO-43.

Further, the family of the victim states that on directions of the National Human Rights Commission [NHRC], the BSF made a payment of Rs. 5,00,000 to the family of the victim.

The medical certificate issued by the Shri Maharaja Hari Singh [SMHS] Hospital, Srinagar confirms the death of the victim due to burning and complications that followed. Letters from the police; from the Sumbal Police Station on 1 December 2006, Senior Superintendent of Police [SSP], Baramulla on 3 July 2002 and SSP, Ganderbal, on 11 December 2006; all confirm the incident and killing of the victim by the alleged perpetrator and that the victim was not involved in any subversive activities and that there was no adverse report against him.

The SHRC issued its decision on 30 October 2002, based on a report from the Inspector General of Police [IGP], Kashmir. The SHRC confirmed the version of events as per the family. The SHRC noted that Constable Gorakhnath Gwali was absconding, and also that the victim was not alleged to be involved in any militancy related activities.

This is therefore a case where the guilt of Constable Gorakhnath Gwali and the innocence of the victim are beyond doubt. Surprisingly, despite the passage of almost ten years no action appears to have been taken against Constable Gorakhnath Gwali, and it is difficult to understand how a person earlier working with the armed forces continues to evade the processes of justice without the acquiescence of the Government.

The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Case No. 146

Victim Details

1. Abdul Ahad Bhat [Extra-Judicial Killing]
Age: 52
Occupation: Head Clerk, Animal Husbandry department
Son of: Ghulam Qadir Bhat
Resident of: Kanispora, Baramulla District, Previously resident of Khanpora, Baramulla District
2. Naseer Ahmad Bhat [Injury]
Son of: Abdul Ahad Bhat
Resident of: Kanispora, Baramulla District, Previously resident of Khanpora, Baramulla District

Alleged Perpetrators

1. Major P.S. Patil, Second in Command, 10 Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Dairy Farm
2. Captain S.S. Yadav, 10 Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Dairy Farm
3. Lance Naik Shakti Singh, 10 Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Dairy Farm
4. Lance Naik Arun Kumar, 10 Jammu and Kashmir Light Infantry [JAKLI], Army, Camp Dairy Farm

Case Information

On the intervening night of 12 and 13 February 2002, army personnel led by Major Patil launched a search operation in Khanpora, Baramulla at around 1:30 am.

¹²² Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. On 11 May 2012 a copy of the FIR and chargesheet were provided.

Major Patil and his personnel forced their way into the house of Abdul Ahad Bhat and shot him dead. His son, Naseer Ahmad Bhat was also injured during the shooting. Following the firing the army left, but then returned for the body of Abdul Ahad Bhat, which was resisted by the family of Abdul Ahad Bhat.

First Information Report [FIR] no.12/2002 u/s 302 [Murder], 307 [Attempt to murder], 452 [House trespass after preparation for hurt/assault/wrongful restraint] Ranbir Penal Code, 1989 [RPC] was filed at the Baramulla Police Station on 13 February 2002¹²³. The communication of 22 May 2012 from the Jammu and Kashmir Police stated that the case was closed by declaring the perpetrators as untraced. A separate RTI was filed regarding all FIRs against State forces in Jammu and Kashmir. By communication dated 25 December 2013 from Jammu and Kashmir Police a copy of FIR was provided and information that the case was closed by declaring the perpetrators as untraced on 1 November 2003. By communication dated 22 April 2014 from Jammu and Kashmir Police, a copy of the closure report was provided.

A counter FIR was filed by the army, FIR no.13/2002 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 3 [Licence for acquisition and possession of fire arms/ammunition]/25 [Punishment for certain offences] Arms Act, 1959 at the Baramulla Police Station¹²⁴. The FIR states that the personnel of the 10 JAKLI were patrolling when they heard a cry from a house. They entered to find that militants had killed a person and escaped. Major P.S. Patil, the alleged perpetrator, was leading this patrol party.

After around a month of the killing of Abdul Ahad Bhat, an army mediator approached the family and offered Rs. 5,00,000 and jobs for two family members in exchange for not pursuing the case. The family refused.

After around one year, one of the sons of Abdul Ahad Bhat was blindfolded and taken to the 10 JAKLI Rifles headquarters in Baramulla where he was offered money in exchange for diluting the contents of the FIR. The brother of Abdul Ahad Bhat did not accept the deal.

The family of Abdul Ahad Bhat gave a statement to the IPTK on 29 December 2011.

The family of Abdul Ahad Bhat filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 445/2002]¹²⁵. The petitioner stated that witnesses had recorded their statements before

the police and the Assistant Commissioner, Baramulla. The petition was filed seeking the completion of the Assistant Commissioners inquiry and the police investigations. Further, a direction was sought to the Home Ministry for sanction to be provided. Major Patil was made a party to the petition. The High Court dismissed the petition on 21 August 2004 after the investigation, based on the FIR, categorized the occurrence as “untraced”. The High Court said that the petitioner was at liberty to move the Magistrate for a re-investigation.

Two status reports filed before the High Court by the Jammu and Kashmir Police authorities are available and may be considered. The first was submitted vide cover letter 25 June 2003 and the second vide cover letter 7 October 2003.

In the 25 June 2003 status report it is stated that the witnesses before the police testified that unidentified masked gunmen wearing army uniforms were responsible for the killings. It was further testified that Major Patil came to the residence of the victim half an hour after the incident. The witnesses stated that Major Patil was named in the FIR based on “mere suspicion”. It is further recorded that Captain Yadav testified that he was leading a party which was ambushed by militants. Major Patil was then informed and he arrived on the spot. The report concludes by stating that investigations are ongoing and the perpetrators are yet to be identified.

The status report of 7 October 2003 confirms the details in the earlier status report. But, on this occasion does not state that the witnesses referred to the unidentified gunmen in army uniforms as wearing masks. Further, this report states that Abdul Ahad Bhat was not involved in any subversive activities. In conclusion it is stated that both FIR's were closed as untraced.

The Union of India and Major Patil stated before the High Court that Major Patil on hearing some exchange of fire had taken place at the Khanpora village, went to the site with police officials. Major Patil only reached the site at about 4:00 am on 13 February 2002. He was accompanied by Aziz Khan, Deputy Superintendent of Police [DSP], Headquarters, Baramulla and the Station House Officer [SHO], Baramulla Police Station.

But, a contradictory position is taken in this response when it is stated that “the allegations against Army personnel breaking open the door, abusing Abdul Ahad Bhat and then killing him are totally false, fabricated and baseless. Shri Abdul Ahad Bhat

123 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. A copy of the FIR was provided by communication from the Jammu and Kashmir Police dated 22 May 2012. Further information sought through RTI on 15 October 2013.

124 Information on this FIR was sought through RTI on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. By communication dated 30 November 2013 from Jammu and Kashmir Police a copy of the FIR was provided. By communication dated 22 April 2014 from Jammu and Kashmir Police a copy of the closure report was provided.

125 Information on the petition number was sought through RTI on 16 February 2012. Information was provided.

sustaining gun shot wound and succumbing to the injury was totally un-intentional, inadvertent and purely as a result of judgmental error caused due to the suspicious actions taken by Abdul Ahad Bhat and also by firing on cordon party at the same time.” This position contradicts the earlier position that Major Patil arrived at the site *after* the firing. It is also stated that a Court of Inquiry had been instituted by the army.

Also in record is a letter dated 9 March 2002 from the Inspector General of Police, Kashmir referring to a report by the Senior Superintendent of Police [SSP], Baramulla. This letter is addressed to the State Human Right Commission [SHRC]. The petitioner before the SHRC responded on 3 June 2002.

The family of Abdul Ahad Bhat states that the SHRC concluded by stating that as the family had already received compensation nothing further could be done. The family had received Rs.1,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders] benefits.

An inquiry into the incident was conducted by Assistant Commissioner, Baramulla. Statements of witnesses were recorded.

Politicians, such as Mr. Saifuddin Soz, of the Congress party, informed the National Human Rights Commission [NHRC] about the incident. The NHRC took cognizance of the case and issued relevant notices. The final status of proceedings is unknown.

The High Court erroneously dismissed the petition based purely on the decision of the Jammu and Kashmir Police to close the case as untraced.

Over last two decades in Jammu and Kashmir hundred of similar cases have been prejudicially closed as untraced by the police, only to be reopened by the High Court.

Rather than taking action itself, the High Court shifted the responsibility to the lower judiciary.

The non-seriousness of the Jammu and Kashmir Police and the enquiry conducted by the Assistant Commissioner, Baramulla has effectively resulted in Major Patil, and other perpetrators involved in the crime, evading justice.

Based on the available documents, particularly the 6 September 2011 Government of Jammu and Kashmir response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], no sanction for prosecution appears to have been sought in this case.

Similarly, official documents from the Ministry of Defence do not mention this case in the list of court-martials conducted in Jammu and Kashmir.

Finally, the contradictory positions of the Union of India and Major Patil before the High Court emphasize the need for thorough investigations in this case.

Case No. 147

Victim Details

Altaf Ahmad Shah [Extra-Judicial Killing]

Age: 21

Son of: Ali Mohammad Shah

Resident of: Peth Zanigam, Beerwah, Budgam District

Alleged Perpetrators

1. Major Vikash Lakhera, 19 Rashtriya Rifles [RR], Army, Badami Bagh Cantonment, Srinagar
2. Captain Raju / Captain Rajee¹²⁶, 19 Rashtriya Rifles [RR], Army, Badami Bagh Cantonment, Srinagar
3. Personnel of 34 Rashtriya Rifles [RR], Army, Beerwah, Budgam District, Camped outside the Beerwah Police Station
4. In-charge, Special Operations Group [SOG], Jammu and Kashmir Police, Magam, Beerwah, Budgam District, Camped outside the Beerwah Police Station [as of June 2002]

Case Information

The family of Altaf Ahmad Shah states that the victim was arrested on 17 June 2002 by the 19 RR. The family states that the victim was arrested along with a person named Mohammad Ayoub Wara, resident of Shivpora, Srinagar who had some links with the troops of the 19 RR. The victim was arrested from the house of Mohammad Ayoub Wara, where he had been working as a painter. Mohammad Ayoub Wara was subsequently released and he informed the family of the arrest of the victim. The family states that on 20 June 2002, the victim was handed over to the joint camp of 34 RR and SOG, Magam. The victim was handed over to the Beerwah Police Station in an injured condition on 22 June 2002. The victim was transferred to the Sub-District Hospital, Beerwah, followed by Shri Maharaja Hari Singh [SMHS] Hospital, Srinagar and finally Sher-e-Kashmir Institute of Medical Sciences [SKIMS] Hospital, Soura where he died on 26 June 2002. The family of the victim believes that the victim was innocent and he had been tortured to death.

¹²⁶ The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], refers to this person as “Raju” whereas the Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA, on 6 September 2011 refers to him as “Rajee”.

The family of Altaf Ahmad Shah gave a statement to the IPTK on 23 December 2011.

The family of Altaf Ahmad Shah states that they filed a First Information Report [FIR] at the Ram Munshi Bagh Police Station on the arrest of the victim. On the death of the victim FIR no.73/2002 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was also filed at the Beerwah Police Station.¹²⁷ The 21 December 2011 communication from the Jammu and Kashmir Police states that on 26 June 2002 the Naib Subedar of 34 RR Camp Beerwah handed over three injured persons to the Beerwah Police Station – Altaf Ahmad Shah, Hilal Ahmad Shah and Mohammad Imran Shah. They were then transferred to hospitals, and then two were released. Altaf Ahmad Shah died. Two of them were found involved in a case under FIR no.71/2002 and a chargesheet was filed. Investigation found that Altaf Ahmad Shah had died due to severe torture and a chargesheet was filed against [Major] Vikash Lakhara and Captain Raju and the case file was sent for prosecution sanction under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA].

FIR no.71/2002 u/s 7 [Prohibition of acquisition / possession / manufacture / sale of prohibited arms / ammunition] / 25 [Punishment for certain offences] Arms Act, 1959 stands registered at the Beerwah Police Station against the victim and two others [brother, Hilal Ahmad Shah, and cousin, Mohammad Imran Shah, of the victim]¹²⁸. This FIR suggests that the three persons had arms and ammunitions with them. The family of the victim rejects this version. They stand by their version of events and state that when the victim was brought to the police station on 22 June 2002, he was able to inform the family. At this point, the brother and cousin of the victim went to meet him. At that point they were apprehended by the 34 RR and falsely implicated, along with the victim, in this case.

A letter from the Senior Superintendent of Police [SSP], Budgam, dated 22 November 2003, to the Deputy Commissioner, Budgam, based on a report states, that FIR no.71/2002 was never proved against the victim, whereas the other two arrested were chargesheeted. The letter also states that the victim was found not to be involved in subversive activities. This letter also confirms that the victim was tortured. Also on record is a letter from the Deputy Superintendent of Police [DSP], Headquarters, supervisory officer of the Beerwah Police Station, to the Superintendent of Police [SP], Budgam, on 21 December 2002. This letter is based on the report of the Station House Officer [SHO] Beerwah Police Station. The report states that on 22 June 2002 the

SHO of the Beerwah Police Station was called to the 34 RR camp. There he was given a written report bearing the signature of the in-charge SOG, Magam. That report stated that there was a joint operation of the 34 RR and the SOG, Magam at Peth Zanigam village and three suspects were apprehended: Altaf Ahmad Shah, Mohammad Imran Shah and Hilal Ahmad Shah. Arms and ammunition were recovered from them. The letter states that they were handed over to the Beerwah Police Station in an injured condition. On the report of the SOG, FIR no.71/2002 was filed. They were then shifted to Sub-District Hospital, Beerwah and then SMHS, Srinagar.

On 24 June 2002, the other two were released, but the victim was transferred to SKIMS, Srinagar. He died due to torture and the FIR no.73/2002 was filed. During the investigation of the case FIR no. 71/2002 it was found that the victim had been arrested by the armed forces on 17 June 2002 at Shivpora, Srinagar where he had been working as a painter. The authorities of the 34 RR informed the SHO, Beerwah Police Station that the victim had been received in a sick condition from 19 RR personnel.

On 4 June 2003 the State Human Rights Commission [SHRC] issued its decision and recommended ex-gratia government relief of Rs. 3,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders]. The SHRC also recommended that a chargesheet be filed against the culprits of the killings of the victim. A letter from the Deputy Commissioner, Budgam to the Jammu and Kashmir Home Department states that the ex-gratia government relief ordered by the SHRC of Rs. 3,00,000 is not permitted under the rules and the matter may be taken up by the Government.

The family of the victim filed a petition before the High Court of Jammu and Kashmir against the non-implementation of the SHRC recommendations on compensation.

The Ministry of Defence, in its affidavit before the High Court in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was under consideration.

The Ministry of Defence, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under AFSPA stated in relation to this case on 10 January 2012 that sanction was declined on 8 February 2010. The reason for declining sanction was that “individual was apprehended in a bona fide military operation and handed over to police. The individual expired after four days in police custody. Army involvement not established in killing of the individual”.

127 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 21 December 2011 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

128 Information on this FIR was sought through RTI on 5 May 2012. By communication dated 9 July 2012 from the Jammu and Kashmir Police a copy of the chargesheet was provided.

129 The Ministry of Defence places this incident as occurring on 26 February 2002. Considering the consistency of dates from other sources [family and police], it is assumed that this is a typographical error, particularly as the case does not seem to turn on this issue.

The Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction was declined.

Before considering the decision of the SHRC, a few preliminary comments may be made:

- The Jammu and Kashmir Police clearly indict the armed forces in the torture of the victim. The police in its letters does not specifically name which of the three units [19 RR, 34 RR, SOG] might be responsible, but does suggest that the torture would have taken place when the victim was in their custody. Further, the police also found that the victim was not involved in any subversive activities – thereby the victim was not booked under FIR no.71/2002.
- An immediate contradiction in the position of the 34 RR and SOG, Magam [as per the police letters of 21 December 2002 and 22 November 2003] is evident. On one hand the two armed forces initially claimed that the victim was apprehended during a joint raid on 22 June 2002 but, subsequently the 34 RR took the position that they had in fact received the victim in a sick condition from the 19 RR. This contradiction is clearly telling.

The conclusions of the SHRC may now be considered. The SHRC first considered the position of the family of the victim, which was that the victim had been apprehended by the 19 RR on 18 June 2002 [which does contradict with the statement given to the IPTK, but does not appear damaging]. The family also states that they believe the victim was handed over to the 34 RR and then the Beerwah Police Station on 22 June 2002.

The SHRC then considered the post-mortem report of the victim which confirmed death by torture. The SHRC also considered the report of the IGP, Kashmir which stated that on 22 June 2002 the Officer in-charge of the Beerwah Police Station was called to the 34 RR camp and was handed over a report bearing the signature of the In-charge of the SOG, Magam. The report of the IGP, Kashmir repeats the sequence of events already narrated above including that the three persons arrested were handed over in an injured condition and that finally no case was made out against the victim under FIR no.71/2002, and that the victim was initially arrested on 17 June 2002 by the 19 RR. Based on this report, the SHRC states the following: “it is unfortunate to note that in case the person of Mohammad Altaf Shah¹³⁰ was apprehended or taken for interrogation by 19 RR for any involvement whatsoever kind was found involved he should have been handed over by the 19 RR as per the requirements of law and the judgment of the Apex

Court as well Hon'ble High Court of the State to the local police...”.

The SHRC was therefore first critical of the manner in which the victim had been handled by the 19 RR. The SHRC then, relying on the police investigations, confirmed the innocence of the victim. The SHRC then considered the responsibility of the three units: 19 RR, 34 RR and SOG, for the torture of the victim and stated that “all these units namely 19 RR, 34 RR and SOG Magam are responsible for this...” The SHRC then issued recommendations on ex-gratia relief and SRO-43 benefits and that the investigation against the culprits must be expedited.

The above record: from the police investigations, on both FIR's, and the indictment of the SHRC suggests a strong case against the 19 RR, 34 RR and the SOG, Magam. But, the Ministry of Defence declined sanction against the two 19 RR officers named above. The Ministry of Defence appears to blame the police by suggesting that the victim was in their custody at the time of the death of the victim. But, both the family and the police clearly suggest that the victim arrived in police custody in an injured condition, apparently tortured by the personnel of the 19 RR, 34 RR and the SOG, Magam. While, with records presently available [which does not include the charge sheet against the officers] it would be impossible to comment on the guilt or the innocence of the two specific officers, but clear responsibility needs to be fixed on specific persons, and most importantly, responsibility needs to be fixed on all three units involved in this case and not just the 19 RR.

The Ministry of Defence by declining sanction for prosecution under AFSPA effectively endorses the crimes perpetrated, which do not appear to have taken place in a bona fide military operation. Also, based on the record, the involvement of SOG of Jammu and Kashmir Police, based at Magam, appears to have not been considered in the investigations conducted by the Jammu and Kashmir Police. It was possible for the police to investigate and then prosecute the culpable SOG personnel involved [particularly the In-charge SOG, Magam] as the SOG is not covered by AFSPA.

The approach of the Ministry of Defence and the police is that of conveniently blaming each other without actually carrying out an impartial investigation which could have resulted in prosecution of the accused from both the police and the army.

The refuge of the blame game appears to only help the perpetrators. The police shields its personnel by not carrying out thorough investigations, while the Ministry of Defence does so by arbitrarily declining sanction. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

¹³⁰ For no discernible reason, the SHRC, on occasion, refers to the victim as “Mohammad Altaf Shah” instead of “Altaf Ahmad Shah”. But, it is clear that the SHRC is referring to the same person.

was apprehended or taken for interrogation by 19 RR for any involvement whatsoever kind was found involved he should have been handed over by the 19 RR as per the requirements of law and the judgment of the Apex Court as well Hon'ble High Court of the State to the local police...".

The SHRC was therefore first critical of the manner in which the victim had been handled by the 19 RR. The SHRC then, relying on the police investigations, confirmed the innocence of the victim. The SHRC then considered the responsibility of the three units: 19 RR, 34 RR and SOG, for the torture of the victim and stated that "all these units namely 19 RR, 34 RR and SOG Magam are responsible for this..." The SHRC then issued recommendations on ex-gratia relief and SRO-43 benefits and that the investigation against the culprits must be expedited.

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The Ministry of Defence by declining sanction for prosecution under AFSPA effectively endorses the crimes perpetrated, which do not appear to have taken place in a bona fide military operation. Also, based on the record, the involvement of SOG of Jammu and Kashmir Police, based at Magam, appears to have not been considered in the investigations conducted by the Jammu and Kashmir Police. It was possible for the police to investigate and then prosecute the culpable SOG personnel involved [particularly the In-charge SOG, Magam] as the SOG is not covered by AFSPA.

The approach of the Ministry of Defence and the police is that of conveniently blaming each other without actually carrying out an impartial investigation which could have resulted in prosecution of the accused from both the police and the army.

The refuge of the blame game appears to only help the perpetrators. The police shields its personnel by not carrying out thorough investigations, while the Ministry of Defence does so by arbitrarily declining sanction. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 148

Victim Details

Khadam Hussain [Abduction and Extra-Judicial Killing]

Spouse: Gulzar Bi

Resident of: Village Dehri Debsi, Mendhar, Poonch District

Mohammad Rashid [Extra-Judicial Killing]

Spouse: Sakeena Bi

Resident of: Village Dehri Debsi, Mendhar, Poonch District

Mohammad Riyaz [Extra-Judicial Killing]

Spouse: Shamim Akhter

Resident of: Village Dehri Debsi, Mendhar, Poonch District

Alleged Perpetrators

1. Captain Naresh, NCA 7th JAT Regiment, Army
2. Lance Naik [Lance Corporal] Pardeep Kumar, NCA 7th JAT Regiment, Army
3. Lance Naik [Lance Corporal] Roshan Kumar, NCA 7th JAT Regiment, Army
4. Sepoy Master Veer, NCA 7th JAT Regiment, Army
5. Sepoy Rajinder Kumar, NCA 7th JAT Regiment, Army
6. Havaldar Ram Niwas, NCA 7th JAT Regiment, Army
7. Havaldar Prithvi, NCA 7th JAT Regiment, Army

Case Information

On the intervening night of 28 and 29 June 2002, Khadam Hussain was abducted by personnel of the NCA 7th JAT Regiment, Army.

Subsequently, Mohammad Rashid and Mohammad Riyaz, who sought to get Khadam Hussain released, were also killed along with Khadam Hussain.

First Information Report [FIR] no.77/2002 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed.

The case was chargesheeted against the alleged perpetrators but no information exists on whether the case was transferred to the army Court-Martial process or the District and Sessions Judge, Poonch.

The State Human Rights Commission [SHRC] was approached by the families of the victims, and based on a report of the Senior Superintendent of Police [SSP], Poonch dated 28 January 2008, which confirmed the abduction, killing and the role of the alleged perpetrators, the SHRC recommended Rs.2,00,000 ex-gratia government relief for the next of kin of each of the victims.

No information exists on the present status of the prosecution of the alleged perpetrators.

But, the available documents do not suggest that a Court-Martial was conducted in this case by the army.

Case No. 149Victim Details

Javaid Ahmad Magray [Extra-Judicial Killing]
 Occupation: 12th Standard student
 Son of: Ghulam Nabi Magray, Ameena
 Resident of: Soiteng [Lasjan], Tehsil Chadoora,
 Budgam District

Alleged Perpetrators

1. Major Srivastava, 119th Infantry Battalion [Territorial Army], Assam Regiment¹³¹, Army, Camp Soiteng
2. Lieutenant Verma, 119th Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soiteng
3. Subedar Surinder Sinha, 119th Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soiteng
4. Havaladar Hamanta Bordoloi, 119th Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soiteng
5. Havaladar Naba Ch. Sinha, 119th Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soiteng
6. Lance Naik [Lance Corporal], Romesh Singh, 119th Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soiteng
7. Sepoy S.U. Borbhuiya, 119th Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soiteng
8. Sepoy Zakir Hussain, 119th Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soiteng
9. Sepoy Ashok Choudary, 119th Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soiteng
10. Sepoy David Lalthanmawia, 119th Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soiteng
11. Sepoy Bijoy Sinha¹³², 119th Infantry Battalion [Territorial Army], Assam Regiment, Army, Camp Soiteng

Case Information

Javaid Ahmad Magray's father states that in the morning of 1 May 2003 his son was missing from his room. His bed appeared as if it had not been slept in the night before. The window in the room was half open. His bicycle was in the lawn of the house, suggesting that he had not gone outside the house. Outside, on the main road, there were many persons from the army. The army persons denied having seen the victim. A large crowd gathered concerned about the victim. They claimed to have heard gunshots at

midnight. There were blood stains, and a tooth, lying on the ground, encircled by a chalk marking.

Lieutenant Verma told the people concerned for the victim that he was in the army camp. They accompanied him to the Camp where Lieutenant Verma said the victim would be brought out in five minutes. But, he then told them that the victim had been handed over to the police. It seemed that the only reason that Lieutenant Verma had given them this information after entering the camp was to ensure that he would not be questioned repeatedly by the family and others demanding information.

The people then proceeded to the police station where they were told that a boy was brought in serious condition to the police station at 3:00 am and they had shifted him to Bone and Joints Hospital, Barzulla and then the Shri Maharaja Hari Singh [SMHS] hospital. After that the residents of the area went to the hospital where the victim was undergoing an operation. After the surgery, the doctors shifted him to Sher-e-Kashmir Institute of Medical Sciences [SKIMS], Soura where the doctors declared him brought dead. An autopsy report confirmed death by shooting. The victim was shot from a close range, and he was shot in his legs, shoulders and inside his mouth.

The family of the victim believes that the motive behind the killing of the victim was that he used to pass by the camp in the early hours of the morning, and may have identified someone at the camp as working with the army. They believe he was taken out of his room through the window. The family also states that Subedar Surinder Sinha camped at Soiteng headed the patrol party that killed the victim.

The army filed First Information Report [FIR] no.63/2003 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition/possession/manufacture/sale of prohibited arms/ammunition]/27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 at the Nowgam Police Station on 1 May 2003 that on the intervening night of 30 April 2003 and 1 May 2003 a militant had been injured in firing while another militant escaped¹³³. The FIR, according to the family of the victim was "misleading and concocted" and was filed by Major Srivastava of the 119th Battalion Assam Regiment under the signature of Lieutenant Verma, the head of the Soiteng Camp. By communication dated 30 November 2013 from the Jammu and Kashmir Police it was stated that the case was closed as not admitted. By communication dated 22 April 2014 from Jammu and Kashmir Police a copy of the closure report was provided.

¹³¹ Possibly a part of the Territorial Army, but not expressly stated as such in the documents available.

¹³² The names of the perpetrators vary from document to document. The above listing is therefore subject to these variations.

¹³³ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 2 June 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013.

The victim's family lodged FIR no.64/2003 u/s 302 [Murder], 120-B [Criminal Conspiracy] Ranbir Penal Code, 1989 [RPC] at the Nowgam Police Station on 1 May 2003 against Lieutenant Verma, which the police first refused to lodge, and only on the intervention of a Minister was it finally registered¹³⁴. By further communication dated 9 July 2012 from the Jammu and Kashmir Police, information was provided in the form of a letter dated 15 June 2012 from the Deputy Superintendent of Police [DSP], Headquarters, Srinagar that a chargesheet had been filed in the case and that the Home Department had raised some observations which were being rectified, following which the case would be resubmitted for sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA]. By communication dated 30 November 2013 from the Jammu and Kashmir Police it was stated that the case was under investigation. By communication dated 22 April 2014 from the Jammu and Kashmir Police this position was reiterated. By communication dated 23 January 2015 information was provided that sanction had been declined and the decline of sanction communication was provided. The date of the document is unclear [but its possibly 3 January 2011] but the sanction is declined on grounds of their being only circumstantial evidence in the case and weaknesses in the investigations carried out are cited. On 3 January 2011, as per a 10 January 2012 response to a RTI, the Ministry of Defence declined sanction with regard to "Sub Surendre Sinha" and stated that "the individual killed was a militant from whom arms and ammunition was recovered. No reliable and tangible evidence has been referred to in the investigation report".

The Deputy Commissioner of Budgam ordered an enquiry on 10 May 2003 and the Assistant Commissioner, Budgam was appointed as the enquiry officer. The enquiry report was submitted on 12 August 2003 and confirms that the victim was not involved in any militancy activity and was killed without justification by Subedar S. Sinha and his associates.

On record is a report sent to the Deputy Commissioner, Srinagar on 19 July 2003 from the Senior Superintendent of Police [SSP], Srinagar. This states that the victim was not involved in militant activities, as claimed by the army. It also states that investigation on both cases [the FIR filed by the army and the victim's family] is ongoing. The report also states that FIR no.63/2003 was based on a written report from a "Major Sh. Wastoo" of the 119 Battalion Assam Regiment, Camp "Soitong" which suggested that the victim was a militant and was killed in cross firing.

The family of the victim filed a petition before the

High Court of Jammu and Kashmir [Service Writ Petition (SWP) 1842/2003¹³⁵]. The petition sought the status of the investigations, action to be taken and compensation/ compassionate employment under SRO-43 [Statutory Rules and Orders] for the brother of the victim. The petition was dismissed on 21 February 2006 for non-appearance.

An application was filed subsequently for its restoration and the petition was restored. The response of the State of Jammu and Kashmir before the High Court stated that compassionate employment for the brother of the victim could not be allowed as the victim was a minor at the time of his death. The petition remains pending in the High Court.

The alleged perpetrators 3 to 11, based on the State of Jammu and Kashmir's representations before the High Court, were chargesheeted u/s 302 [Murder] and 120-B [Criminal Conspiracy] Ranbir Penal Code, 1989 [RPC]. In relation to the FIR filed by the family, the Ministry of Defence, on an order of the High Court, filed an affidavit before the High Court in 2009 on sanctions for prosecution, and stated that this case remained under consideration with regard to alleged perpetrators 3-7 and 10-11 listed above. Sanction for prosecution of alleged perpetrators 3 to 11 was sought from the Ministry of Defence, by the Jammu and Kashmir Home Department, on 16 July 2007.

The FIR filed by the army was closed as not admitted.

The family approached the State Human Rights Commission [SHRC] on 2 September 2003 and a final decision was issued on 26 February 2004 based on a report of the Inspector General of Police [IGP], Kashmir, which recommended ex-gratia government relief of Rs. 2,00,000 to the family of the victim and compassionate employment under SRO-43 [Statutory Rules and Orders]. On 17 March 2009 the National Human Rights Commission [NHRC] directed payment of Rs. 3,00,000.

The two documents on record that may be analyzed, in a case where no charge sheet was filed in a court [although a case appears to have been made out against alleged perpetrators 3 to 11], are the SHRC judgment of 26 February 2004 and the Assistant Commissioner, Budgam enquiry report of 12 August 2003.

The SHRC found that the factum of the death of the victim was established, and that the victim was not a militant and was not involved in any anti-national activities. The SHRC decision was based, in part, on a report from the IGP, Kashmir which found that the deceased was not involved in any militancy related activities. But, the SHRC placed "complete reliance" on the Assistant Commissioner, Budgam's enquiry

¹³⁴ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 21 December 2011 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

¹³⁵ Information on the petition number was sought through RTI on 16 February 2012. Information was provided.

report of 12 August 2003, and recommended ex-gratia government relief of Rs. 2,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders].

Before the Assistant Commissioner, Budgam, the army claimed that there had been cross firing and that the victim, a militant, had died. The army also confirmed that the person leading the patrol party was Subedar Surinder Sinha.

Besides the statement of the father of the victim, the enquiry also recorded the statements of three lecturers who had taught the victim. They all testified to the character of the victim and that he had never taken part in anti-national activity. Similarly, the principal of the educational institution provided, by letter, the same testimony to the enquiry.

An interesting argument was also raised by Major Srivastava, when he claimed that the BSF had visited the house of the victim at 10:30 pm for questioning. This was raised to suggest that the security forces were honourable in their intentions, thereby suggesting that the questioning the night before adds credibility to the army version of cross-firing with militants. But, the BSF, through a letter, denies that any BSF party conducted any visit to the victim's house on that night. The enquiry then concludes that "there is default/hand of army in killing the deceased". Subedar Surinder Sinha, despite being called by the enquiry to testify, did not do so.

The enquiry finally concluded that the victim was not a militant, was killed by Subedar Surinder Sinha and the patrolling party without any justification and crucially that the superior officers were informed.

The final document of relevance is a letter to the Deputy Commissioner, Srinagar, dated 19 July 2003 from the SSP, Srinagar, which confirms that the victim was not involved in "subversive activities".

Therefore, the enquiries on record conclusively indict Subedar Surinder Sinha, his associates, and Major Srivastava and Lieutenant Verma for their role as supervisors who appeared to cover up the killing of the victim. These indictments appear to call into doubt the Ministry of Defence position of 3 January 2011, while declining sanction. Further, contrary to the documents on record, the Ministry of Defence accepts the position of the army that the victim was a militant.

There appears to be a complete lack of clarity within the Jammu and Kashmir Police on the status of the instant case. It appears that the police are completely unaware of the decline of sanction on 3 January 2011.

The final point to be made would be on the discrepancies, in names of the perpetrators and for whom the sanction was sought. This is apparent from the sanction documents and other representations. These discrepancies, while

possibly unintentional, further complicate the matter. Particularly when one considers that the sanction, it could be argued, was denied only in the case of "Sub Surendre Sinha", as his is the only name mentioned in the denial of sanction reference in RTI. Yet the denial of sanction letter names only 9 of the alleged perpetrators. It is also noteworthy that the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 150

Victim Details

Abdul Hameed Wani [Abduction, Torture, Extra-judicial killing]

Age: 45

Occupation: Masonry

Son of: Mohammed Jamal Wani

Resident of: Muchwa, Chadoora, Budgam district

Alleged Perpetrators

1. Syed Gazanfar Ali, Station House Officer [SHO], Police Station Nowgam, Jammu and Kashmir Police

Case Information

The witness [who requests anonymity] gave the below statement to the IPTK on 20 March 2014.

On the morning of 26 November 2002, the victim was on his way to work by bus when Syed Gazanfar Ali, SHO of Nowgam Police Station, picked him up. The driver of the bus is the source of this information.

When the family of the victim found out, they rushed to Nowgam police station. The police station denied that the victim had been picked up or that he was present in the police station. However, a few police personnel told the family that the victim was present in the police station. Three days later, they admitted that he was in their custody at the police station. They told the family that he was unwell and therefore they had admitted him in Soura Hospital. The police personnel had told the hospital authorities that the victim had been injured as he was fighting for land with some persons. When the family reached the hospital, the police personnel, on seeing the family, left the victim and went away. The victim was put on a ventilator but he later died.

They saw blue ink on one of his thumbs and the family believes that the police might have forced him to put his thumb impression on some document. However, this would have been forced because the victim was used to signing all documents himself. The police tried to make it look like a suicide case. But the actual reason for his death was torture during interrogation inside the police station.

A case was filed against the abovementioned SHO. He was also suspended for some time. Yet, he was later promoted.

On file is FIR no. 128/2002 under section 309 [attempt to suicide] Ranbir Penal Code [RPC] dated 1 December 2002 at Police Station Nowgam. Information was sought through RTI dated 15 October 2013 to the Jammu and Kashmir Police. By communication dated 30 November 2013 from Jammu and Kashmir Police a copy of FIR was provided. By communication dated 22 April 2014 from Jammu and Kashmir Police information was provided that the chargesheet in this case had been filed before the competent court by the Crime Branch. This information was confirmed by a response dated 4 January 2013 to a RTI dated 18 December 2012 on custodial killings in Jammu and Kashmir. Information was that the chargesheet had been filed on 1 March 2014 against the alleged perpetrator on the following sections of the Ranbir Penal Code [RPC]: 306 [abetment to suicide], 342 [punishment for wrongful confinement] and 323 [punishment for voluntarily causing hurt].

Further information on the FIR was sought through RTI dated 14 November 2014.

The above anonymous testimony indicts the alleged perpetrator. Further, even police investigations have indicted him but there has obviously been an attempt to shield him from stronger prosecution and therefore he has been charged under Section 306 instead of Section 302 [Murder].

Case No. 151

Victim Details

Mohammed Sultan Malik [Extra-judicial killing]
Age: 65
Occupation: Farming
Son of: Mohammed Subhan Malik
Resident of: Bangdara, Kreeri, Baramulla district

Sameer Ahmed Malik [Injury]
Son of: Samander Malik
Resident of: Bangdara, Kreeri, Baramulla district

Mohammed Yousuf Ganai [Injury]
Son of: Ghulam Mohiudeen
Resident of: Chandkote, Kreeri, Baramulla district

Alleged Perpetrators

1. Vikas Verma, Major, 22 Rashtriya Rifles [RR], Bathoo Chooru Camp

Case Information

The nephew of the victim, Hilal Ahmad Malik gave the below statement to the IPTK on 16 April 2014.

At around 6 pm on 5 December 2002, army personnel raided the house of Hilal Ahmad Malik [interviewee]. Major Vikas Verma, of the 22 Rashtriya Rifles [RR], camped at Bathoo Chooru, headed the raiding party. Hilal Ahmad Malik's father, Ghulam Mohammed, and sister, Haseena Begum, were at home along with him at that point. Hilal himself was outside the residence, as he had just returned from his in-laws' house. As he entered the compound of his residence he saw a group of army men. He knew one of the army personnel; he enquired from him the reason for the raid. He was told that the army had received information of militants hiding in the house. But, the search party did not find any militants in the house. Hilal entered the house and found many army personnel inside. He recognized one of them – Havaladar Kamal.

Then at about 11 pm, Major Verma brought explosives in a big box. He told all the family members to move out of the house. Everyone left the house and took refuge in a neighbors' house at a distance of about 100 meters. He then caught hold of Aabid Hussain Khan, Hilal's 16-17 year old nephew, and asked him to place an IED in Hilal's room on the second floor. Aabid did as he was told. Meanwhile, Major Verma also kept some ammunition in another room and spread some bullets around.

Then Major Verma called the village headman – Abdul Hamid Khan, another person named Ghulam Rasool Ganai of Chooru and Bashir Ganai of Bangdara. Major Verma showed them the ammunition in the room. He had also taken some pictures of the room. Then the IED was activated and the house was blown up. Due to the blast, the entire house was destroyed.

The following day, on 6 December 2002, there was a protest by the villagers and the affected family on the Chooru road [Srinagar – Baramulla highway]. The protest was against the army for the blast on the previous night.

Meanwhile, the army from the Bathoo Chooru camp stationed itself on the Chooru Bridge. They then fired. Sameer Malik was shot on the left side of his abdomen, while Mohammad Yousuf was shot in the leg. The army personnel continued firing and Hilal's uncle Mohammad Sultan Malik received many bullets on his chest and abdomen. After the firing, the army moved back to their camp at Bathoo Chooru. Major Verma was in charge of this camp. The persons shot were rushed to the SMHS hospital in Srinagar, where Mohammad Sultan Malik was declared brought dead.

An hour after the firing, [according to the interviewee] the Deputy Commissioner Baramulla visited the village. Further, an FIR was registered at the Sopore Police station. The SHO of the police station was Khursheed Khan.

Eight to ten days after the incident, statements were recorded in the Deputy Commissioners office two days in a row. For a week, following the blast, Hilal and his

family received police security to prevent any further damage by Major Verma. The police also recorded Hilal's father's statement.

Hamid Malik, son of Mohammad Sultan Malik was given employment under Statutory Rules and Orders [SRO-43] [compassionate employment]. Further, the family received Rs. 1 lakh ex-gratia relief. Hilal's family meanwhile received Rs. 75000 as compensation for damage to the house. But, he estimates that the value of the house [as in 2014] would be Rs. 45 lakhs. It was a 3-storied, 15-room house.

Hilal believes that the reason for the attack on his house was that his father had gone to Moulvi Iftikhar's house and complained about the harassment meted out by Major Verma. Further, he had sought that the army camp be shifted. Major Verma had tortured others in the area before, for example: Abdul Majeed Mir, son of Kamal Mir and Hafizullah Mir, son of Ghulam Mohammad Mir.

A month after the blast, Major Verma was transferred out of the camp.

In addition to the above testimony, on file is FIR no.114/2002 under section 307 [attempt to murder], 427 [mischief causing damage] Ranbir Penal Code [RPC] and sections 7/25 Arms Act dated 6 December 2002 at Kreeri Police station [in relation to the blasting of the house]. ARTI was filed regarding all FIRs filed in Jammu and Kashmir against state forces. By communication dated 25 December 2013 a copy of the FIR was provided and the case was said to be under investigation. Further, that the nominal roll of army personnel was awaited. Further information was sought on this FIR through RTI dated 14 November 2014. By communication dated 6 January 2015 from the police a letter was provided sent the Sub-Divisional Police Officer of Pattan to the SSP, Baramulla that states that while the nominal roll was awaited the investigations against the army and specifically the alleged perpetrator have been confirmed to the extent that he did blast the house.

Separately, for the killing of Mohammad Sultan Malik, FIR no. 268/2002 u/s 302, 307 RPC was filed at Sopore Police Station. Information was sought through RTI dated 14 November 2014. By communication dated 5 January 2015 from the Jammu and Kashmir Police a copy of the FIR was provided and information that the case was under investigation.

It has been reported that the State Human Rights Commission [SHRC] took suo-moto cognizance of a newspaper report dated 20 December 2002 in Greater Kashmir. But, it appears the news item referred to "torture" [in fact firing injury] and not the blast or the subsequent killing. The victims of the alleged torture reported include Sameer Ahmad Malik and Mohammad Yousuf Ganai. But, it appears that

Mohammad Sultan Maliks case was subsequently included in the SHRC proceedings. The family of Mohammad Sultan Malik state that they are unaware of the status of proceedings in the SHRC as they discontinued the case subsequently. On file is communication dated 24 March 2003 from the Inspector General of Police [IGP], Kashmir to the SHRC. In this report, the allegations of "torture" are said to have been disproved following investigations. But, the investigations in the case of Mohammad Sultan Malik are said to be ongoing. Further, while referring to the incident, the communication refers to the blasting of the residential house as "alleged" but also mentions that the protest procession on 6 December 2002 was "peaceful".

Also on file is the post-mortem of Mohammad Sultan Malik which places the time of death as 6 December 2002 at 1:15 pm. Cause of death is listed as cardio-respiratory arrest due to blood loss. The medical institution is listed as SKIMS.

The statement of the witness is a clear indictment of the role of the alleged perpetrator [and Havaladar Kamal] in the blasting of the house. Further, on the actual killing, the alleged perpetrator's role would have to be further investigated. Based on his being in charge of the camp, and the previous days blasting of the house, his role in this analysis has not been limited to one of Command Responsibility as he appears to have been directly involved in the crime. But, further investigations are warranted.

Case No. 152

Victim Details

Mohammad Ashraf Malik [Abduction, Torture and Extra-Judicial Killing]

Age: 25

Occupation: Daily wager in the State Forest Department

Son of: Mohammad Khazir Malik

Spouse: Atiqa Bano

Resident of: Malik Mohalla, Kupwara Town

Alleged Perpetrators

1. Major Chauhan, 41 Rashtriya Rifles [RR], Army

Case Information

On 16 May 2003, Major Chauhan and Special Operations Group [SOG] personnel of the Jammu and Kashmir Police searched the residence of Mohammad Ashraf Malik and asked that the victim present himself before them at the Town Hall Kupwara. Mohammad Ashraf Malik presented himself before Major Chauhan.

He was then allowed to attend Friday prayers on the condition that he would return once again to Major

Chauhan. Mohammad Ashraf Malik was detained along with four other persons. While the four persons were released on the same day, the victim was not.

The family of Mohammad Ashraf Malik made continuous enquiries on the whereabouts of the victim.

On the intervening night of 19 and 20 May 2003 a blast was heard. On 20 May 2003, the family of Mohammad Ashraf Malik was informed by the Senior Superintendent of Police [SSP], Kupwara that the victim had died in an Improvised Explosive Device [IED] blast on the previous night. One kilogram of the victim's flesh was handed over to the family. The family of Mohammad Ashraf Malik believes that he was tortured and that the IED blast was a cover up.

First Information Report no.91/2003 u/s 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Kupwara Police Station on 20 May 2003 at 7:30 am for the disappearance of the victim from 16 May 2003¹³⁶. The FIR states that the victim was presented before the Commander, Kupwara, on 16 May 2003. He was not released. The Commander, Kupwara had sent some people to the house of the victim asking for the victim to be appear before the Town Hall where the Commander wanted to see him. The family approached the Commander but the victim was not released. The closure report, dated 14 July 2004, states that the witnesses who deposed stated that the 41 RR was not involved in the case. But, no names of witnesses are provided in the closure report. By communication dated 25 April 2014 from the Jammu and Kashmir Police similar information/documents were again provided. The FIR has a notation on it as follows: "Not admitted 29/6/04".

The Government of Jammu and Kashmir ordered an enquiry on 21 May 2003 to be conducted in the case by the Additional Deputy Commissioner, Kupwara within 15 days.

A petition was filed in the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 698/2003]¹³⁷ for the conducting of investigations and filing of a chargesheet against Major Chauhan, and for compensation. On 10 June 2004 the petition was dismissed as withdrawn.

Apparently, based on the available government documents, this case neither concluded in a manner

where sanction for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] was sought and neither did the army by itself carry out a court-martial against accused army personnel. The then Chief Minister of Jammu, Mufti Mohammad Syed, ordered an enquiry which never culminated into anything substantive against the accused. Ideally, the army claiming the killing of Mohammad Ashraf Malik in an IED blast after the FIR was filed, should have led the Jammu and Kashmir Police to interrogate the accused army personnel. But, instead, the case was closed following investigations.

It is required to be investigated what transpired in the Jammu and Kashmir Police investigations with regard to the FIR filed in the concerned police station and also the enquiry report by the Additional Deputy Commissioner, Kupwara. The closure of investigations and enquiry in this gruesome crime only adds to the cover up and impunity.

Case No. 153

Victim Details

Tasveer Hussain, Special Police Officer [SPO], Jammu and Kashmir Police [Abduction, Wrongful Confinement, Torture and Extra-Judicial Killing (Custodial Killing)]
Son of: Hassan-ud-Din
Resident of: Baghyar Dara, Haveli, Poonch District

Alleged Perpetrators

1. Captain Piyara Singh Toor, Army¹³⁸

Case Information

Tasveer Hussain was picked up on 23 August 2003 and was confined and tortured. Tasveer Hussain subsequently died as a result of this torture. It is alleged by the family of Tasveer Hussain, as reported in the media, that the army wanted him to work as a source for the army but he refused¹³⁹. This could have been the cause of his death.

First Information Report [FIR] no.127/2003 u/s 34 [Common intention], 109 [Abetment], 341 [Wrongfully restraining person], 342 [Wrongfully confining person], 323 [Punishment for voluntarily causing hurt] Ranbir Penal Code, 1989 [RPC] was filed at the Poonch Police Station on 9 September 2003¹⁴⁰.

¹³⁶ Information on this FIR was sought through Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. By communication dated 24 December 2013 from Jammu and Kashmir Police a copy of FIR and closure report were provided.

¹³⁷ Information on the petition number was sought through RTI on 2 July 2012. Information was provided.

¹³⁸ The Ministry of Defence, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], on 10 January 2012 referred to the alleged perpetrator by this name. Alternatively referred to as "Tanveer Singh Randawa Capt. Toor" or "Taranveer Singh Randawa Capt. Toor" of the LU Department, Poonch Branch, in the State Human Rights Commission [SHRC] documents.

¹³⁹ The Tribune, <http://www.tribuneindia.com/2011/20110719/j&k.htm#top>, 19 July 2011.

¹⁴⁰ Information on this FIR was sought through RTI on 5 May 2012. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

By communication dated 15 June 2012 from the Jammu and Kashmir Police it was stated that this case was under investigation with the Crime Branch, Jammu. But, in response to RTI filed on 18 December 2012 to Jammu and Kashmir Police regarding custodial killings in Jammu and Kashmir between 1989 and 2012, by it was stated that the case was closed as challaned. Communication dated 10 January 2015 from the Jammu and Kashmir police states that the case was closed as not admitted on 15 March 2014.

The Ministry of Defence, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 10 January 2012 that sanction for prosecution was declined on 29 November 2011. Further, that: "the individual was handed over to police station Poonch on 24 August 2003 in medically fit condition within the laid down limit of 24 hours and individual died on 22 September 2003 i.e. one month after his handing over to police".

The State Human Rights Commission [SHRC] issued a final decision in the matter on 10 November 2008.

The report of the Senior Superintendent of Police [SSP], Poonch dated 11 August 2008 was considered, which stated that Tasveer Hussain was apprehended by the 2nd Jammu and Kashmir Light Infantry [JAKLI], Army, for questioning and then released.

Further, he was once again brought to the Poonch Police Station for questioning and once again released.

Finally, he was arrested by the alleged perpetrator, beaten and he died on 22 September 2003.

The SHRC, based on this report, indicted the alleged perpetrator and recommended Rs. 1,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders].

Further, a letter from the Inspector General of Police [IGP], Crime Headquarters, Srinagar, to the Director General of Police [DGP], Jammu and Kashmir, on 14 September 2009 states that the case was closed as chargesheeted against four accused persons and sanction for prosecution had been sought. This letter also indicated that the matter remained seized with the SHRC.

Documents on record suggest that the Government of Jammu and Kashmir sanctioned the ex-gratia government relief on 25 May 2009. But, as per information available, as of 6 September 2011, the ex-gratia government relief was yet to be paid.

It is noteworthy that it took the Jammu and Kashmir Police, Government of Jammu and Kashmir and

Ministry of Defence eight years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

Further it is clear that the Ministry of Defence concedes that the victim was in the custody of the army. Under these circumstances, the mere handing over the victim to a police station would not absolve the army of culpability. The burden is on the army to prove that the victim did not die to the treatment meted out to him during custody.

The Ministry of Defence seems to have cared very little about the SHRC order or the Jammu and Kashmir Police investigations or in instituting a process for delivering justice. The available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 154

Victim Details

1. Umar Mukhtiar Rather [Extra-Judicial Killing]
Son of: Mukhtiar Ahmad Rather
Resident of: Hillar, Kokernag, Islamabad District
2. Dawood Ahmad Wani [Extra-Judicial Killing]
Son of: Abdul Aziz Wani
Resident of: Hillar, Kokernag, Islamabad District
3. Constable Zahoor Ahmad Bhat [Extra-Judicial Killing]
Son of: Anbar Bhat
Resident of: Hillar, Kokernag, Islamabad District
4. Rouf Ahmad Sheikh [Assault]
Son of: Ghulam Qadir Sheikh
Resident of: Hillar, Kokernag, Islamabad District
5. Mohammad Shafi Parray [Assault]
Son of: Ghulam Hassan Parray
Resident of: Hillar, Kokernag, Islamabad District
6. Abdul Salam Sheikh [Assault]
Son of: Mohammad Anwar Sheikh
Resident of: Hillar, Kokernag, Islamabad District
7. Bilal Ahmad Bhat [Assault]
Son of: Abdul Rehman Bhat
Resident of: Soaf Shalli, Kokernag, Islamabad District

Alleged Perpetrators

1. Head Constable Arun Kumar, 10th Battalion Indo-Tibetan Border Police [ITBP]
2. Head Constable Rajesh Kumar, 10th Battalion Indo-Tibetan Border Police [ITBP] [reportedly deceased]

Case Information

On 30 August 2003, at 9:30 am Umar Mukhtiar Rather, Dawood Ahmad Wani and Constable Zahoor Ahmad Bhat were injured in the firing by Head Constable Arun Kumar and Head Constable Rajesh Kumar of the 10th Battalion of ITBP while they were patrolling on the Hiller bridge.

Umar Mukhtiar Rather and Dawood Ahmad Wani were travelling in a school bus which was stopped by the 10th Battalion ITBP. Head Constable Arun Kumar and Head Constable Rajesh Kumar opened fire and Umar Mukhtiar Rather, Dawood Ahmad Wani and Constable Zahoor Ahmad Bhat were injured. They were taken to the Islamabad District Hospital.

During this incident, the personnel of the 10th Battalion ITBP proceeded to beat other people. Rouf Ahmad Sheikh, Mohammad Shafi Parray, Abdul Salam Sheikh and Bilal Ahmad Bhat were injured by this beating. The 10th Battalion ITBP was infamous for harassing people in the area.

First Information Report [FIR] no.105/2003 u/s 307 [Attempt to murder], 341 [Wrongfully restraining person] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition / possession / manufacture / sale of prohibited arms/ammunition]/27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 was filed at the Kokernag Police Station on 30 August 2003¹⁴¹. By communication dated 19 May 2012 from the Jammu and Kashmir Police information was provided that the case was closed as accidental, and the case file was submitted to, and remains with, the Superintendent of Police [SP], State Human Rights Commission [SHRC], Srinagar and that the victims have approached the SHRC for compensation. By further communication dated 21 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. By communication dated 16 November 2013 two police communications are provided. The first, dated 14 February 2013 from the Station House Officer [SHO], Police Station Kokernag to the Additional Superintendent of Police [ASP], Anantnag. The second, dated 15 February 2013, from the ASP Anantnag to the Senior Superintendent of Police [SSP], Anantnag. Both communications summarize the present status of the case. The FIR was lodged by Mukhtiar Ahmad Rather. The police investigations found that ITBP personnel stopped a bus at the Hiller bridge. The passengers were ordered to come down. The passengers followed the orders except for one person who resisted the order. He was asked to show his identity card. He denied saying that he was a policeman. A scuffle broke out between the policeman and the ITBP personnel and three rounds were fired by the ITBP personnel. Two students namely Umar Mukhtiar Rather and Dawood Ahmad Wani, and the police personnel Zahoor

Ahmad Bhat, were injured. The case was closed as chargesheeted against the alleged perpetrators and sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] was sought. By letter dated 8 December 2007 from the Deputy Inspector General [DIG], South Kashmir Range, Anantnag, a response was received along with the denial of sanction by the Ministry of Home Affairs. Sanction was not granted on the grounds that “during scuffle three rounds got fired accidentally from the service weapon of the sentry on duty which resulted in getting policeman and two students superficial/non fatal gunshot injuries”. This communication of 8 December 2007 was addressed to SSP, Anantnag and he was asked to re-investigate the case through SHO, Police Station Kokernag who followed directions and concluded the case as accidental. Further, SP, SHRC vide his movement order dated 3 June 2010 deputed Inspector Ashiq Hussain Malik for collection of the case diary file from Police Station Kokernag and the file was collected on 8 June 2010 and is lying with the SHRC. By communication dated 16 May 2014 from the Jammu and Kashmir Police the following information was provided: “The investigation of these cases has been closed as untraced. Unless and until the Hon'ble court admits/agrees with the the investigation of the case, the same is supposed to be subjudice before the Court of law.”

In response to RTI on court-martials in Jammu and Kashmir, the ITBP gave relevant information by communication dated 5 March 2014. The response states that the State Human Rights Commission took suo-moto cognizance and that vide letter dated 4 March 2008, Senior Superintendent of Police [SSP, Anantnag states that the case was closed on 13 February 2008 as accidental fire. Further, it appears a court-martial was conducted, and the finding was as stated above about accidental firing. Further, it is stated that all injured were immediately evacuated to Government Hospital, Islamabad. Further, that the story that girls were asked to remove their clothes and run is concocted.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA stated on 6 September 2011 in relation to this case that sanction was sought from the Ministry of Home Affairs and it was declined on 20 November 2006. The incident is described as “Civil passenger bus in which two boys and one police person died”. It therefore appears that Umar Mukhtiar Rather, Dawood Ahmad Wani and Constable Zahoor Ahmad Bhat were killed in the firing by Head Constable Arun Kumar and Head Constable Rajesh Kumar, the information for which was not provided by the Jammu and Kashmir Police to the IPTK.

141 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

By communication dated 18 December 2014, from the Jammu and Kashmir Police, a copy of the decline of sanction letter dated 20 November 2006 was provided. This letter is sent from Deputy Secretary to Government of India, Ministry of Home Affairs, to the Deputy Secretary to Government of Jammu and Kashmir, Home Department. The reasons for the decline of sanction are as follows:

- The Investigating Officer has not shown the blood stained earth, which is normal phenomena in such firing incidents, and the position of the alleged accused persons and victims, at the time of the alleged incident.
- The site plan of the position of the bus has not been shown and neither does any witness identify the registration number of the bus or colour.
- The driver and conductor, independent and important witnesses in this case, have not been interviewed by the Investigating Officer for a statement. The statements are of the injured persons.
- The position of the Hillar bridge and distance from the bus stand and the place where the alleged incident took place has not been mentioned.
- In letter dated 17 November 2003 addressed to the SHRC, the Unit Commandant put on record the forces position on the case. The ITBP personnel were on bona fide government duty on the bridge and the firing took place accidentally. All the passengers on the bus were embarked when the bus came to a halt near the bridge. One person in plain clothes remained on the bus. When asked by the personnel to get down and show his identity, he refused, claiming he was a policeman. There was then a scuffle with the personnel. During this scuffle, three rounds were accidentally fired. This resulted in superficial/non-fatal injuries to three persons: the policeman and two students.
- Head Constable Rajesh Kumar expired on 3 December 2003.

The above denial of sanction is an ideal example of the manner in which the Executive seeks to dismiss human rights violations in Jammu and Kashmir. First, the points regarding the blood stained earth, clour and registration of the bus and the positioning of various parties/objects are clearly completely irrelevant to the key question of criminality of the ITBP. Second, the reason regarding "independent witnesses" is contrary to the law and clearly an attempt to manufacture a reason, albeit baseless in law, to protect the perpetrators. The Supreme Court of India has clearly held that unless there is certain animosity towards the

accused, there is no reason that even a relative of a murdered victim cannot be considered an independent witness. In the instant case, it is clear that injured persons would be perfectly valid independent witnesses. The driver and conductor could also have been interviewed, but this does not weaken the case in anyway. Third, and most importantly, the decline of sanction makes not attempt to explain how it reached the conclusion that the firing was accidental. Further, on the subject of positioning of parties, how is it that three rounds fired, accidentally, would remarkably result in the death of three persons? The decline of sanction is clearly an attempt to protect the alleged perpetrators.

The Jammu and Kashmir has closed the case as accidental following the decline of sanction for prosecution under AFSPA instead of further agitating the matter. Therefore, the police have chosen to blindly change their entire investigations following the decline of sanction.

Further, by communication dated 21 September 2012, the ITBP in response to a RTI stated that no sanction for prosecution had been sought. This is obviously contradictory.

Case No. 155

Victim Details

Tahir Hassan Makhdoomi [Extra-Judicial Killing]

Age: 23

Occupation: 1st yr BA student/part time farmer

Son of: Ghulam Hassan Makhdoomi

Spouse: Afroza

Resident of: Tujjar Sharief, Sopore, Baramulla District

Alleged Perpetrators

1. Major Rajinder Singh [Operational name: Major Rajiv¹⁴²], 22 Rashtriya Rifles [RR], Army, Camp Bomai, Sopore, Baramulla District

Case Information

The family of Tahir Hassan Makhdoomi sought permission for the wedding of the victim on 10 and 11 September 2003 from the Major of the 22 RR Bomai Camp on 9 September 2003. It is pertinent to mention that in the rural areas of Jammu and Kashmir the army had implemented a policy that villagers were to seek the prior permission from the concerned local army camp for organizing any functions where guests would be invited and there would be late night activities.

¹⁴² The spelling of the alleged perpetrator is taken from the State Human Rights Commission [SHRC] final decision of 2 November 2006. The family of the victim spells the name slightly differently as "Rajendra".

The wedding of the victim ended on 11 September 2003. At around 4:30 am on 12 September 2003 the family of the victim states that their house was raided by soldiers from the 22 RR, Bomai Camp. The family states that the soldiers were sent by Major Rajinder Singh. The soldiers claimed that the victim would be released by 7:00 am. While the family protested, they were beaten and the victim was taken away. Over the next few days the family approached the Bomai Camp. But, while the soldiers accepted that the victim was in their custody, he was not released. The family of the victim was asked repeatedly over three days to return at a subsequent time. No other information of the victim was provided.

Around 5:00 am on 15 September 2003, Major Rajinder Singh came to the house of the family of the victim and informed the father of the victim that his son had been an informer for the army and had died in an explosion during an anti-terrorist operation at Yemberzalwari. Subsequently, the left leg of the victim, the only part of his body that could be recovered from the explosion, was provided to the family of the victim. Based on the information provided by Major Rajinder Singh, only the victim was killed in this incident. Nobody from the army was injured or killed.

The family of the victim states that the reason that the victim was killed was because of an angry exchange of words between Major Rajinder Singh and the victim's father two or three months prior to the incident. During a crackdown, Major Rajinder Singh referred to the victim's father as a "Jamaati" to which the victim responded that it was not unlawful to be a member of the Jamaat-e-Islami. On this, Major Rajinder Singh had threatened the victim's father.

Subsequent to the death of the victim, Major Rajinder Singh approached the uncle of the victim to compromise. But, the compromise was not accepted.

The family of Tahir Hassan Makhdoomi gave a statement to the IPTK on 24 December 2011.

First Information Report [FIR] no. 321/2003 u/s 302 [Murder], 342 [Wrongfully confining person] and 346 [Wrongful confinement in secret] Ranbir Penal Code, 1989 [RPC] was filed at the Sopore Police Station on 15 September 2003 following orders from the Chief Judicial Magistrate [CJM], Sopore¹⁴³.

On 19 March 2005, the Additional District Magistrate, Baramulla, stated that based on a police report there was nothing adverse found against the victim.

On 2 November 2006, the State Human Rights Commission [SHRC], having taken suo moto cognizance, issued a final decision and recommended ex-gratia government relief of Rs. 2,00,000, compassionate employment under SRO-43 [Statutory Rules and Orders] to the family of the victim, and directed the police to file a charge sheet against Major Rajinder Singh.

The family of the victim has received Rs. 1,00,000 and the compassionate employment under SRO-43 [Statutory Rules and Orders] to date. Also, of note, is the suo-moto cognizance taken by the SHRC again on 10 December 2007 on the same matter. By decision dated 12 August 2009, the SHRC noted that the family of the victim had received ex-gratia government relief [without specifying the amount received] and compassionate employment under SRO-43, and disposed off the matter by stating that the investigations must be brought to a logical conclusion.

The National Human Rights Commission [NHRC] took suo-moto cognizance on the case on 19 September 2003. The Secretary, Ministry of Defence, was asked to submit remarks on the case.¹⁴⁴ The progress of the suo-moto cognizance before the NHRC remains unclear.

The SHRC decision of 2 November 2006 is presently the only document on record for the purposes of analysis. This decision is based on the report to the SHRC from the Director General of Police [DGP], Jammu and Kashmir on 3 January 2005. The report states that two FIR's, one from the family of the victim [321/2003], and the other from the 22 RR [322/2003¹⁴⁵] had been investigated. The FIR from the army refers to the victim being an informant and dying during an operation. It also states that five soldiers were injured. The report of the DGP, Jammu and Kashmir states that during investigations under FIR no. 321/2003, offences had been prima facie established against Major Rajinder Singh and others. With regard to FIR no. 322/2003 the report states that while statements of army personnel had been recorded, no details on the alleged injured soldiers had been provided.

143 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. RTI was filed on 18 December 2012 to Jammu and Kashmir Police regarding custodial killings in Jammu and Kashmir between 1989 and 2012. By communication dated 13 March 2013 a copy of the FIR was provided along with information that the case was under investigation. Further information sought through RTI on 15 October 2013. By communication dated 9 January 2014 it was stated that the case was still "under investigation" and a copy of the FIR was provided.

144 The Tribune, Chandigarh, <http://www.tribuneindia.com/2003/20030921/nation.htm#5>, 20 September 2003.

145 Information on FIR no.322/2003 u/s 302 [Murder], 307 [Attempt to Murder] Ranbir Penal Code, 1989 [RPC] and 3/5 Explosive and Substances Act at Sopore Police Station was sought through RTI on 2 July 2012. No information was provided. Further information sought through RTI on 15 October 2013. By communication dated 9 January 2014 a copy of the FIR and closure report was provided and it was stated that the case was closed as not admitted on 8 September 2012. This FIR was filed on 15 September 2003 by the 22 RR. The FIR states that the victim [referred to as Tahir Ahmad Pir, son of Ghulam Hassan Pir] was a close confidant of Mohammad Sultan Bhat, a "known terrorist". The victim accompanied a patrol from the Bomai Camp to show them a hideout, which was discovered at 1:15 a.m. While the stores in the hideout were being removed, there was a blast in which the victim died, and five soldiers were injured.

Before considering the manner in which the SHRC dealt with this report, it is clear that this report implicates Major Rajinder Singh and others of the 22 RR. Further, the army version of events, while not specifically refuted by the police, appears highly improbable considering that despite the passage of close to two years [from the date of the incident to the submission of the report of the DGP, Jammu and Kashmir to the SHRC], the army does not appear to have provided information regarding the others injured during the operation.

The SHRC concluded that “certain things are obvious”. First, that the victim had been taken into custody by the 22 RR headed by Major Rajinder Singh. Second, that it “had been admitted by the police authorities that Tahir Hussain Makhdoomi was murdered during the custody”. The SHRC continued to state that “Even if we believe the version of Army, it does not absolve them from the responsibility of protecting a man in their custody... Once a man is jailed or is in the custody of the police his human rights does not cease at all.” The SHRC therefore strongly indicted Major Rajinder Singh and directed the police to file a charge sheet against him.

The allegation that the victim was an informant is untenable considering that the victim was forcibly abducted from his residence. Further, for the three days when the family was continuously approaching the Bomai Camp, they were never informed that the victim was serving as an informant for the army or that he had been sent on an operation. The branding of the victim as an informant appears to have been aimed at deriving impunity for the armed forces and simultaneously discrediting and thereby disabling the family from seeking social support.

Despite the clear indictment of the alleged perpetrator, as accepted by the police in 2005, it appears that no action has been taken to date. The Jammu and Kashmir Police continue to state that the case is under investigation. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 156

Victim Details

1. Maqsood Ahmad Reshi [Injury]
Son of: Mohammad Akbar Reshi, Sakoona
Resident of: Daffpora, Budgam District
2. Zahoor Ahmad Lone [Extra-Judicial Killing]
Son of: Ghulam Mohammad Lone, Azinab
Resident of: Daffpora, Budgam District

Alleged Perpetrators

1. Commanding Officer [Colonel] Ganpathy, 35
Rashtriya Rifles [RR], Army, Budgam

Case Information

On 4 October 2003, Maqsood Ahmad Reshi and Zahoor Ahmad Lone, both minors, were used as human shields in an operation conducted by Commanding Officer Ganpathy. Maqsood Ahmad Reshi was injured while Zahoor Ahmad Lone died.

Suits were filed before the District Judge, Budgam in both cases for compensation. The Government of Jammu and Kashmir in its response in Zahoor Ahmad Lone's suit states that: First Information Report [FIR] no. 281/2003 u/s 302 [Murder], 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition/possession/manufacture/sale of prohibited arms/ammunition]/27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 was filed following the killing of three civilians, including Zahoor Ahmad Lone, during cross-fire with militants. This was closed on 6 December 2003. This was when the militants were hiding in Mohammad Maqbool Dar's, son of Anwar Dar, house. The Commanding Officer, 35 RR, Budgam and the Defence Secretary contended in both suits that the victims voluntarily accompanied the search party, as required by law.

In a statement to the court, Commanding Officer Ganpathy accepts that he carried out the operation along with some volunteers who were not forced to be a part of the search. During the operation, a civilian was shot during cross-firing with militants.

Further, another civilian sustained injuries. Commanding Officer Ganpathy states that he does not know whether the civilian who was killed, or the civilian who was injured, were the volunteers who accompanied the search party.

No information exists on what basis the Jammu and Kashmir Police closed the case. This closure report would, by law, have to be judicially scrutinized. Whether this was actually done would need to be ascertained. There appears to be no dispute that the victims were in the custody of the army and the alleged perpetrator. Therefore, the burden lies on Commanding Officer Ganpathy to explain the circumstances of the injuries to Maqsood Ahmad Reshi and the killing of Zahoor Ahmad Lone.

It also needs to be investigated how the two victims were taken along in a search operation. The details of the incident would strongly suggest that they were used as human shields.

But, absolute impunity has been ensured in this case which is evidenced by available documents that do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 157Victim Details

Faiz Akbar Khan [Extra-Judicial Killing]
 Son of: Sayeed Mohammad Khan
 Resident of: Dhundak, Surankote, Poonch District

Alleged Perpetrators

1. Ajaib Urangh, 15th Assam Regiment, Army

Case Information

On 15 February 2004, at around noon, the victim was killed by a patrol of soldiers of the 15th Assam Regiment at his residence.

First Information Report [FIR] no.18/2004 u/s 302 [Murder] and 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Surankote Police Station by the family of the victim.

Following the non-investigation of the above FIR, the family of the victim approached the SHRC on 5 September 2007 and a final decision was issued on 16 June 2008.

The Inspector General of Police [IGP], Jammu submitted a report that stated that the commission of the crime had been proved against the alleged perpetrator and a charge sheet had been filed in court on 25 May 2004.

The SHRC recommended ex-gratia government relief of Rs.1,00,000 to the family of the victim and compassionate employment under SRO-43 [Statutory Rules and Orders].

While the Jammu and Kashmir Police state that a charge sheet had been filed against the alleged perpetrator, the official documents from the Ministry of Defence documents on sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] do not list this case.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Therefore, it appears that absolute impunity has been ensured for the alleged perpetrator.

Case No. 158Victim Details

Ghulam Mohammad Mir [Abduction, Torture and Extra-Judicial Killing (Custodial Killing)]

Age: 35
 Occupation: Shopkeeper
 Son of: Khair Mir
 Resident of: Narasthan, Tral, Pulwama District

Alleged Perpetrators

1. Major Sumit Rastogi, 42 Rashtriya Rifles [RR], Army, Camp Newgoali

Case Information

On 21 February 2004 there was a crackdown in the area. Ghulam Mohammad Mir and his cousin, also named Ghulam Mohammad Mir, were asked to come to army camp by Major Rastogi.

On the next day, they went to the camp. The victim entered the camp. The cousin of the victim waited outside till 6:00 pm and then he was asked to come the next day.

On the following day, 23 February 2004 it came to be known that the victim had been killed in custody.

First Information Report [FIR] no.9/2004 u/s 302 [Murder], 342 [Wrongfully confining person] Ranbir Penal Code, 1989 [RPC] was filed at the Tral Police Station¹⁴⁶. The communication dated 15 May 2012 from the Jammu and Kashmir Police stated that on 23 February 2004 one Ghulam Mohammad Mir, son of Mohammad Ramzan, resident of Narasthan, Tral lodged a written report in the Tral Police Station to the effect that Major Rastogi and other personnel of 42 RR illegally confined his cousin Ghulam Mohammad Mir, son of Khair Mir, resident of Narasthan, Tral and tortured him severely, and was admitted in Sub-District Hospital, Tral where he succumbed to injuries.

The case was closed as chargesheeted against the alleged perpetrator and was sent for sanction for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] but was declined by the Ministry of Home Affairs. The case was under investigation.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that it was received in October 2008 and was under consideration. The Ministry of Defence, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under AFSPA, stated on 10 January 2012 in relation to this case that sanction was declined on 19 August 2010.

Further, the Ministry of Defence communication

¹⁴⁶ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. A copy of the FIR was provided by the Jammu and Kashmir Police by communication dated 15 May 2012. Further information sought through RTI on 15 October 2013. By communication dated 7 November 2013 from the Jammu and Kashmir Police a copy of the FIR and decline of sanction communication was provided. Further information sought through RTI dated 14 November 2014.

contests that “there is conflict between the post-mortem report by four doctors and their subsequent statements given to the investigating officer after five months”. Also on record is the decline of sanction letter dated 19 August 2010 that was provided by the Jammu and Kashmir Police on 9 July 2012 with regard to Major Sumit Rastogi. This letter states that the 23 February 2004 post-mortem report noted that there were no external or internal injuries on Ghulam Mohammad Mir and that he had died due to “massive myocardial infarction”. The witnesses examined by the police, including three witnesses present in the camp, did not testify to seeing any torture.

In the instant case, the Jammu and Kashmir Police stated on 15 May 2012 that sanction was declined by the Ministry of Home Affairs, while in fact sanction was declined by the Ministry of Defence as the case pertains to their jurisdiction.

The Ministry of Defence, in its affidavit before the High Court in 2009 places this incident on 23 February 2004 and refers to it as being a case of custodial death.

But, in the 10 January 2012 response to a RTI, the Ministry of Defence places the incident on 21 February 2004 and refers to it as being a case of killing by shooting.

With regard to the decline of sanction by the Ministry of Defence, the question arises whether the Ministry of Defence by contesting the post-mortem report and the subsequent Doctor's statements is questioning the cause of the death of the victim or is also in denial of the custody of the victim and the circumstances surrounding his death.

The issue of custody of the victim by the concerned army personnel cannot be refuted by the Doctor's statements and the post-mortem report.

In fact, the decline of sanction letter of 19 August 2010 appears to accept custody. Based on this position of the Ministry of Defence, the army has the burden to both explain the custody and the death of Ghulam Mohammad Mir which took place inside the army camp.

Case No. 159

Victim Details

1. Bushan Lal [Extra-Judicial Killing (Fake Encounter)]
Son of: Madan Lal
Resident of: Nangocheck, Jammu
2. Satpual [Extra-Judicial Killing (Fake Encounter)]
Son of: Moli Raj
Resident of: Chatta, Jammu
3. Ram Lal [Extra-Judicial Killing (Fake Encounter)]

Son of: Babu Lal

Resident of: Lalyal, Jammu

4. Ashok Kumar [Extra-Judicial Killing (Fake Encounter)]

Resident of: Kishan Nagar, Pathankote, Jammu

Alleged Perpetrators

1. Major Vijay Chahar, 18 Rashtriya Rifles [RR], Army

Case Information

On 20 April 2004 Subedar N.K. Baswas of the 18 RR Camp lodged a written report in Lalpora Police Station to the effect that on 20 April 2004 the said unit received specific information about the movement of terrorists in the general area of Markul. Two officers and other personnel of the 18 RR laid an ambush in the general area of Markul Dever. There was cross fire. Two terrorists were killed.

In this connection, First Information Report [FIR] no. 21/2004 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition / possession / manufacture / sale of prohibited arms / ammunition] / 25 [Punishment for certain offences] Arms Act, 1959 was filed at the Lalpora Police Station.

In June 2004 some persons of Waliwar, Ganderbal approached the District Magistrate, Kupwara for the disinternment of the dead bodies. This was ordered to be done on 22 June 2004.

On 23 June 2004 the bodies were exhumed and handed over to the applicants: Noor Mohammad Shah, son of Mohammad Yousuf, resident of Waliwar, Ganderbal and Syed Mustafa, son of Pir Mohammad Ayoub Shah, resident of Waliwar, Ganderbal who took the bodies to their native village Waliwar, Ganderbal and buried them in their ancestral graveyard.

On 2 October 2005 the father of Bushan Lal filed a written report in the Lalpora Police Station that the victims were taken as labourers to Lolab, Kupwara. Later, he learnt that the victims had been killed and buried at Lalpora.

FIR no. 69/2005 u/s 364 [Kidnapping/Abducting to murder], 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Lalpora Police Station. Investigation was taken up. The Investigating Officer recorded statements.

In order to ascertain the veracity of both FIR's, as the exhumed bodies were beyond recognition, DNA testing was to be done. The District Magistrate, Srinagar was approached to facilitate the exhumation. Ultimately, a team reached Srinagar on 25 July 2006 and proceeded to Ganderbal. The locals protested the exhumation on religious grounds. The exhumation could not be done.

Correspondence was also made to the 18 RR to furnish the nominal roll of the ambush party who were deputed to Markul Dever on 20 April 2004. But they did not cooperate.

Information on both FIR's was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 6 January 2012 from the Jammu and Kashmir Police, copies of the FIR's were provided and information was provided that investigations were ongoing.

A crucial factor in this case, was the role of Captain Sumit Kohli, who was going to speak out regarding the fake encounter of the victim and was subsequently found dead. Army claimed he committed suicide, while as his family believes he was murdered. It appears an anonymous letter was sent to the family of the victims about the fake encounter.

This was mentioned in the FIR filed as well. The family of the victims believe this letter was sent by Captain Kohli.

On the same day, 20 April 2004, on which this fake encounter was carried, few hours before, in the same locality an IED blast was carried out on a team of human rights activists monitoring the parliamentary elections of 2004. Human rights defender Aasia Jeeani along with the driver of the vehicle were killed. Based on the revelations and research conducted in the above-mentioned fake encounter, it appears that there is a connection between the attack on human rights defenders and this particular fake encounter; the fake encounter was an attempt to pass off the blame of the attack on human rights team on the four Jammu victims. The death of Captain Sumit Kohli, who appears to be the whistle blower in this case, has never been investigated despite repeated appeals by his family. The police have so far failed in carrying out investigations in the fake encounter case; attack on human rights defenders and also in the death of Sumit Kohli.

The family of the victims filed a petition before the High Court of Jammu and Kashmir.

Despite the passage of eight years, the status of investigations of the Jammu and Kashmir Police is unclear.

Further, it appears quite likely that no investigations would have been carried out in relation to the letter of Captain Kohli. By not carrying out a comprehensive and speedy investigation, the Jammu and Kashmir Police have clearly allowed the perpetrators of the crime to avoid justice.

The Ministry of Defence seems to have cared very little

about the Jammu and Kashmir Police investigations or in instituting a process for delivering justice.

The available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 160

Victim Details

Mohammad Bashir Bhat [Extra-Judicial Killing]

Occupation: Sub-Inspector, Jammu and Kashmir Police

Son of: Mohammad Joo

Resident of: Mastandra, Surankote, Poonch District

Alleged Perpetrators

1. Deputy Superintendent of Police [DSP] P.N. Shan, Special Operations Group [SOG] Jammu and Kashmir Police, Surankote
2. Ashiq Hussein, Special Police Officer [SPO], Jammu and Kashmir Police
3. Mohammad Bashir [Unit not ascertained]

Case Information

In April 2004, Mohammad Bashir Bhat objected to the shifting of a polling booth during Parliamentary elections in Surankote by the SOG party headed by DSP P.N. Shan. The victim was threatened and subsequently killed on the night of 6 August 2004 by the alleged perpetrators¹⁴⁷.

First Information Report [FIR] no. 127/2004 u/s 302 [Murder], 120-B [Criminal Conspiracy] and the Arms Act, 1959 was filed at the Surankote Police Station on 7 August 2004.

The FIR states that Pakistan sponsored terrorists at the behest of the Inter-Services Intelligence [ISI] stormed into the house of Mohammad Bashir Bhat at 3:00 pm and killed him on 7 August 2004¹⁴⁸. The 15 June 2012 communication from the Jammu and Kashmir Police states that this case was transferred to Crime Branch, Jammu vide order no. 3792/2004 dated 20 November 2004. Crime Branch, Jammu filed a chargesheet in this case in the court on 18 May 2005. The chargesheet, dated 16 March 2005, maintains that the victim was killed by three non-state actors. This information on a Crime Branch chargesheet is re-confirmed by the police by communication dated 10 January 2015. The family of Mohammad Bashir Bhat also approached the State Human Rights Commission [SHRC].

Rather than proceed against the alleged perpetrators, the version in the FIR resulted in a chargesheet against non-state actors. The present status of the case is unknown.

¹⁴⁷ Public Commission on Human Rights, The Informative Missive, October 2004, p.11.

¹⁴⁸ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 15 June 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. RTI filed on 18 December 2012 to Jammu and Kashmir Police regarding custodial killings in Jammu and Kashmir between 1989 and 2012. A copy of the chargesheet was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

Case No. 161Victim Details

Parvez Ahmad Khan [Abduction, Extra-Judicial Killing [Custodial Killing]]

Age: 19

Occupation: Student [12th Standard]

Son of: Manzoor Ahmad Khan

Resident of: Dilbagh, Devar, Lolab, Kupwara District

Alleged Perpetrators

1. Major Vijay Chahar, 18 Rashtriya Rifles [RR], Devar Camp, Kupwara
2. Brigadier, Chairkoot Camp [as in the year 2005]
3. Colonel [Commanding Officer], 18 Rashtriya Rifles [RR], Kooligam camp [as in the year 2005]

Case Information

On 11 September 2004, at about 5 pm, the victim went to the Devar market to purchase a newspaper. After buying the newspaper, on his way back to his residence, he was stopped by army personnel of the RR, camped at Devar, headed by Major Vijay Chahar. The victim was taken to a location that was one hundred meters from his residence. Syed Khan [son of Zaitullah Khan], Rehmat Shah [son of Mohiuddin Shah [adopted by Sher Ahmad Khan], and Bidla Jan [deceased] [wife of Aziz], all of whom were residents of Dilbagh, Devar, witnessed these events. The witnesses observed these events from outside their houses. Though they saw the victim being taken by the army, the witnesses did not deem it necessary to inform his family, as this was a normal and routine practice in the village i.e. the army picking up boys for some purpose. They did not expect that he was going to be killed. It was only after he was killed that the witness gave this information to the police.

The family members of the victim were unaware of the above events. Though they heard 20-30 gunshots being fired, they had no information about what had happened. Subsequently, at about 8 pm, the army raided the house of the victim. Everyone was ordered to leave the house while they searched it for a few hours. During the search operation, the army seized the following belongings of the victim: a book, two batteries from his still camera, his photographs and his ID card. They asked the family of the victim his whereabouts. The family told the army personnel that the victim had gone to Devar to purchase a newspaper and that perhaps he remained there due to the firing in the village. The family of the victim thought the victim would be at his uncle's house in Devar for the night.

The following morning, on 12 September 2004, 8-10 army personnel came to the residence of the victim and informed his father that Major Chahar was calling

him to the camp. The victim's father went to the Devar Camp of the 18th RR at about 6 am, where he was offered tea and made to wait for half an hour. Then Major Chahar informed the victim's father that his son had been killed when the army opened fire on two militants who were escaping from Dilbagh village but bullets hit his son accidentally, killing him. The army informed the father of the victim that they had taken his son's body to the Lalpora Police Station.

The father of the victim states that his son knew the army personnel, including Major Chahar, well. The victim used to play volleyball and cricket with them. The father of the victim also knew Major Chahar well as they had met on many occasions, as the former was the village head. On one such occasion, the father of the victim had bought a new truck and Major Chahar came to his residence to greet him.

The father of the victim states that following the killing of the victim; the army sought to file a First Information Report [FIR] at Lalpora Police Station stating that the victim was a militant. However, the Station House Officer [SHO] at the Police Station refused, as the police knew the victim by face and knew that he was not a militant. The father of the victim states that the purpose of the search operation at their residence was to try and find something against the victim that could be used to portray him as a militant. The father of the victim states that Major Chahar was always interested in promotions and awards, and this was the motivation for the killing.

After giving the father of the victim news about his son's death, he was sent on a bus to the Lalpora Police Station. On reaching the Police Station, the father of the victim refused to take the victim's body and told the police that he wanted those higher up in the administration to come to the spot and then take action. Following this, on the same day, then Senior Superintendent of Police [SSP], Kupwara, Sunil Dutt, and the Deputy Commissioner [DC], Kupwara, came to the police station. They also visited the spot where the victim was killed. There was blood smeared on the ground on the spot where the victim had been shot.

The victim had been shot in the chest, right shoulder and right thigh. The shells of bullets fired by the army were recovered from the same spot where the blood of the victim was smeared. According to eyewitnesses, Major Chahar and other army personnel accompanied SSP, Kupwara, DC, Kupwara and other persons to the site of the killing. SSP Kupwara questioned the army personnel about the blood and the shells found on the spot of the killing. One of the army personnel replied that the victim was shot and then jumped [perhaps a suggestion that the victim, having been shot, continued moving towards the person shooting] towards the spot where the shells were. SSP Kupwara was trying to suggest that the victim was not shot in action, but was executed. The army personnel also stated that they recovered a transistor from the victim

as he was trying to contact militants. The father of the victim states that the army brought a broken radio set and showed that as part of what had been recovered from the victim.

After about four months, the army personnel regularly began to stop the father of the victim at the roadside to ask him to withdraw the case from the concerned Police Station. The father refused and suggested they kill him if they wished; only then would there be no one to pursue the case.

One year after the incident [in which time, in fact only a few days after the killing, Major Chahar had been transferred to the Tikipora camp. The father of the victim supposes that's where he was transferred as the Major from that camp came to Devar], Major Chahar came to the residence of the father of the victim and told him to withdraw the case. The father said he would think about it.

Then after a few weeks he was called to the Kooligam camp of 18RR to meet the Commanding Officer [CO]. First, Major Chahar, who was also present there, spoke to him about the withdrawal of the case, and second, he was taken into the CO's room who also told him to withdraw the case or else he would have to face problems.

Then, a few months later, the Sector Commander, a Brigadier, camped at Chairkoot, called the victim's father. He was told by the Brigadier to withdraw the case and was offered help, including a job for his other son. The father of the victim remained silent and said he would think it over.

Then after 8-10 days, an army vehicle came to the victim's house and took him to the Kupwara court. There he gave a written affidavit to the army that his son was killed in cross firing. The father of the victim did this just to avoid any further problems. After this affidavit was given, nothing further happened in the case.

The father of the victim remembers that in the same year as his sons killing, Major Chahar was also involved in another killing of four labourers who were bought from Banihal to Kupwara and were killed in a fake encounter.

In 2011, the family of the victim asked a Muslim officer in the army, at the Devar Camp, to return a copy of the Identity Card of the victim that had been taken during the search operation on the day following his killing. The card was returned. The face of the victim in the photograph was disfigured.

The father of the victim, Manzoor Ahmad Khan, gave the above statement to the IPTK on 7 November 2013.

First Information Report [FIR] no. 42/2004 was filed at Police Station Lalpora under sections 302 [Murder], 342 [Wrongful confinement] of the Ranbir Penal Code

[RPC] dated 12 September 2004. Information was sought on this FIR through the Right to Information [RTI] Act, by application dated 14 November 2014. By communication dated 19 December 2014 a copy of the FIR and status of the case were provided. The police states that the army also filed a FIR and ultimately the case has been closed as it has been found that while the victim was not a militant he was also not picked up by the army. Therefore, in effect, he was killed in cross-firing.

Four days after the killing, the family of the victim was given Rs. 1 lakh as ex-gratia relief, but no compassionate employment under Statutory Rules and Orders [SRO 43] was granted.

First, the father of the victim only remembers the accused officers name to be "Chahar", but he also remembers his involvement in another case in the same year. This case has already been recorded by the IPTK [and also forms a part of this report] and the full name of the officer – Vijay Chahar – is therefore known, and mentioned above as well.

The statement of the father of the victim forms the immediate basis of this case. Though this statement is detailed and without contradictions, it is essential for the statements of the witnesses to the events leading to the custodial killing to be recorded, which have not been obtained so far but are valuable evidence against the alleged perpetrator. The statement of the father has corroborative value especially since he met the alleged perpetrator the day after the killing and subsequently in the months following it.

From the statement of the victim's father, it is unclear whether he filed a statement in court before a Judge [Section 164]. If such a statement were not filed before a Judge of the Court, it would have little legal value, if any. Additionally, under the circumstances mentioned by the father of the victim, even a statement given before a judge could be considered a statement under duress. It is common practice in Kashmir for police and the armed forces to put pressure on the victims and their families to withdraw criminal complaints following the crimes in which members of the police and armed forces are involved. Despite this, the only legal way the case could be "withdrawn" is if the father of the victim [in this particular case] and more importantly, the key witnesses were to provide statements in court or to the police without any coercion that the said crime did not take place. Based on this, the criminal procedure code would still have to be followed and a final report would need to be filed before a court.

In addition to the basic accused person in this case – Vijay Chahar – two others have been named [by rank only] as alleged perpetrators for their direct role in the cover up. Under international criminal law principles of command responsibility it is clear that both the Sector Commander – Brigadier at Chairkoot – and the Commanding Officer of the basic accused – the Colonel at Kooligam – would be indicted for failing to

take action following receiving information of a crime having been committed by a person under their effective control.

The status of investigations in the present case are not known. But, based on the statement of the father of the victim it appears that the police [also indicted by this fact] has probably “closed” the case based on the “withdrawal statement” of the father of the victim.

Case No. 162

Victim Details

Mohammad Ashraf Lone [Abduction, Torture, Extra-judicial killing]

Age: 30

Occupation: Special Police Officer [SPO]

Son of: Ghulam Qadir Lone

Resident of: Bakhpora, Rafiabad, Baramulla district

Alleged Perpetrators

1. Major Mohammad Anwar [Code name], F Company, 28 Rashtriya Rifles [RR], Army, Chatoosa Camp, Rafiabad

Case Information

On 26 September 2004, the victim was posted at Fakiporacheckpost. He was posted as a security guard for the Sikh community members in the Fakipora village. In the morning, at about 11 am, the alleged perpetrator arrived at the checkpoint and asked for the victim to accompany him. Havaladar Ghulam Hassan objected but subsequently relented when the alleged perpetrator gave a signed declaration in writing. The signed declaration, provided by the family of the victim to the IPTK, is handwritten and signed by “Mohd. Anwar”, with the following details: “F Coy Cdr, 28 RR”. The note refers to the time of the incident as “11 am on 26-9-04”. Most importantly, it is stated that the victim was “taken under custody for questioning”. Further, the word “lifted” is scratched out and replaced with the above words.

Major Anwar then took the victim to Fakipora village where there was a crackdown. The same evening, the Superintendent of Police [SP], Junaid was informed that the victim was dead. The following morning, Havaladar Ghulam Hassan visited the family of the victim and informed them that Major Anwar of 28 RR had picked up the victim the previous evening. Wife of the victim, Misra Lone, and the brother of the victim, Khaliq Lone went to Dangiacha to ascertain the whereabouts of the victim. But, on the way, they came across personnel from the Dangiacha police station who informed them that the victim had been killed. Following his killing, villagers from Fakipora held a protest on the Watergam highway. SP Junaid intervened and promised action against the army.

When the wife of the victim saw the dead body of the victim, she observed that there was an injury on the back of the head. She believed that he had been given a blow on the back of his head. There were also marks around her neck, possible signs of strangulation.

A classmate of the victim, who was a photographer, took pictures of the dead body while it was at the Dangiacha army camp. The wife of the victim procured these pictures and later submitted them to the SHRC.

The family of the victim gave the above statement to the IPTK on 27 May 2014.

First Information Report [FIR] no. 71/2004 under section 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at Dangiacha Police Station on 26 September 2004. Information was sought through RTI dated 14 November 2014. By communication dated 5 January 2015 from the Jammu and Kashmir Police a copy of FIR and final report were provided. Further, it is stated that the case was closed as not admitted.

By communication dated 28 October 2004, Senior Superintendent of Police [SSP], Baramulla, sought the issuance of dependent/income certificates from the Deputy Commissioner, Baramulla, in favor of the family of the victim for the purposes of processing Janta Insurance claims. In this communication, SSP, Baramulla stated that the army personnel of 28 RR camp Chatoosa, Rafiabad lifted the victim from the Fakipora police picket and he was then “killed during interrogation...” Following this, by communication dated 19 November 2004, Police Station Panzalla informed the SSP, Baramulla, that the victim was not found involved in any subversive activities, and that there was nothing adverse in the records of the police station.

Then, eight years later, there is a communication dated 25 June 2012 from Deputy Commissioner, Baramulla to the Commissioner Secretary to Government, General Administration Department, Srinagar. This communication states that, during investigations, the dead body of the victim was “taken into the possession from Army camp Dangiacha and was subjected to post mortem examination at PHC Dangiacha. The post mortem report reveals that the death of the deceased was caused due to “Cardio Respiratory arrest due to Vasovagal attack, and secondly, due to food particles entering the trachea causing Mechanical Asphyxia”. Further, the report of Superintendent of Police [SP], Sopore, revealed that “During the course of investigation and as per the statement of witnesses and post mortem report it has surfaced that the death of the deceased namely Mohd Ashraf Lone has not been caused due to torture by Army but during taking his lunch some food substance has gone through his breathing system which has caused his death. Based upon the evidence, the investigation of the case has been closed as “NOT

ADMITTED". Further, the communication states that the case was discussed in the District Level Screening Cum Co-ordination Committee dated 31 October 2011, wherein it was cleared for ex-gratia relief. This communication seeks instructions on whether ex-gratia government relief could be sanctioned.

Also on record is the final page of State Human Rights Commission [SHRC] decision dated 14 March 2013. This page refers to the communication dated 25 June 2012 referred to above. The SHRC recommended that the Deputy Commissioner, Baramulla process the ex-gratia government relief in terms of instructions conveyed to him by the General Administration Department or, if instructions not received, take initiatives to get the instructions.

No ex-gratia government relief or compassionate employment under SRO-43 [Statutory Rules and Orders] has been given to the family of the victim to date. By order dated 19 November 2004, the wife of the victim was adjusted as a SPO in lieu of her husband, for an honorarium of Rs. 1500 per month, as per order of SSP, Baramulla.

The incomplete SHRC decision does not assist in the instant case. But, the communications on record strongly suggest the involvement of the army, and particularly the alleged perpetrator, in the killing of the victim, and the apparent role of the Government of Jammu and Kashmir in the cover up.

There is a clear contradiction between the position of the Government in 2004 and 2012. In 2004, as per the SSP, Baramulla communication of 28 October 2004, the 28 RR had killed the victim during interrogation. But, by 2012, the position appears to have changed to death due to choking, in layman terms. The basis for their initial position in 2004 needs to be ascertained. It may well be that this position was based on evidence from witnesses. Regardless of the change of final conclusions by 2012, the fact that the victim was in army custody does not appear to be disputed even in 2012 as it is stated that the body was retrieved from the Dangi-wacha army camp [which also confirms the version of the family of the victim that his dead body was there].

The death of the victim in the custody of the army, along with the circumstances [based on witness evidence] on how he was taken from his duty, strongly suggests that the victim was killed by the army, notwithstanding the post mortem findings. Further, while the note signed by Major Anwar may not have legal value, it requires to be investigated.

Therefore, in the circumstances of the case, evidence on record does suggest the involvement of the alleged perpetrator and 28 RR in the abduction, torture and extra-judicial execution of the victim. Despite this, there appears to be absolute impunity for the 28 RR as no information exists on whether sanction for prosecution under AFSPA was sought/granted or

whether any court-martial proceedings were carried out.

Case No. 163

Victim Details

Farooq Ahmad Wani [Extra-judicial killing]

Age: 22

Son of: Abdul Majeed Wani

Resident of: Chetroo, Dangerpora, Chadoora, Budgam district

Ghulam Hassan Magloo [Extra-judicial killing]

Resident of: Chetroo, Dangerpora, Chadoora, Budgam district

Alleged Perpetrators

1. Mangey Ram, 35 Rashtriya Rifles [RR], Nagam Camp

Case Information

On the morning of 29 November 2004, the army cordoned the village Chetroo. They belonged to the 35RR and they were under the command of Mangey Ram. The family later came to know about his name when they were told to appear in Nagam camp for identifying the accused [the family is unaware of his rank].

After the cordon, all the inhabitants of the village were taken out of their houses and were made to stand on the roadside. Mange Ram ordered all those who were working at the airport to separate themselves from the rest of the inhabitants of the village. Farooq Ahmad Wani and Ghulam Hassan Magloo were working at the airport so they separated themselves. Then, the army started beating and abusing them.

One of the elders of the village, namely Mohammad Ismail, asked the army why they were beating the people. But army personnel responded by thrusting the old man and he fell down on the street. This angered the people of the village and they started raising their voice and were raising pro-freedom slogans. The army then started firing at the locals of the village leading to the death of two persons – Farooq Ahmad Wani and Ghulam Hassan Magloo. Farooq was shot on his upper right thigh. People tried to take them to the hospital but the army didn't allow them to do so. Almost one hour passed and the Commanding Officer of the above said Battalion came to the spot. He ordered that the two injured persons be taken to the hospital. The father of the victim doesn't know the name of the commanding officer.

The army took the injured to the Sub-District Hospital Budgam in an army truck. But the doctors there said to take them to the Soura Hospital. They provided the ambulance and they headed towards the Soura hospital. Both Farooq and Hassan Magloo bled to

death on the way to Soura.

On returning from Soura hospital, when they reached Budgam, the family was stopped near the police lines Budgam and was kept inside along with the dead bodies for three hours. The family kept asking the police why they were being kept there, why the police was not allowing them to go to their village and bury the dead bodies. Later they come to know that they were made to wait for the day as the intent was that the dead bodies should not reach the village in daytime, because then people would gather while burying the dead bodies and an uproar might start. That is why the army didn't allow them to go to their village till 6 pm. At 6 pm, the army allowed them to take the dead bodies to the village. After reaching the village, the family buried the bodies.

After a few days, one of the police personnel from Police Station Chadoora came to the house of Farooq Ahmad Wani and told the family to appear in Nagam Camp. When they appeared there, they were asked to identify the army personnel who were there during the crackdown. The family identified one of the personnel who there and that was when they came to know that his name was "Mangey Ram". The family doesn't know what was done with him.

In February 2015, the family received a summons from Chadoora court; they appeared there and narrated what they had witnessed about the incident. The Station House Officer [SHO] of the police station Chadoora also appeared in the court a few days before they received the summons. When the family testified about the incident before the judge, the judge told them that the SHO had informed the court that the two were shot when "cross firing" was going on. The witness doesn't remember who the SHO was at that time. His name probably was Manzoor. The case is not closed yet; it is going on in Chadoora court.

The father of Farooq Ahmad Wani, Abdul Majeed Wani, gave the above statement to the IPTK on 12 March 2015.

First Information Report [FIR] no. 186/2004 was filed at the Chadoora police station under Section 302 [murder], 307 [attempt to murder] Ranbir Penal Code [RPC] and Section 3/27 Arms Act. The FIR was filed on 29 November 2004. There is no information, except the above witness testimony, on the present status of the FIR and investigations. Further information on this FIR was sought through RTI dated 15 July 2015.

The witness statement above is clear and indicts the army, particularly Mangey Ram. There is no information on what the Jammu and Kashmir police have done in investigations except that they appear to

have tried to close the case before the court by claiming "cross firing". Finally, based on available information, it appears the Ministry of Defence has not carried out even a court-martial in this case.

Case No. 164

Victim Details

Qazi Mohammad Yousuf [Abduction and Extra-Judicial Killing]

Age: 28

Son of: Nazira Begum, Gul Mohammad Qazi

Resident of: New Theed, Harwan, Srinagar

Alleged Perpetrators

1. Superintendent of Police [SP], Srinagar Anand Jain, Jammu and Kashmir Police [presently Senior Superintendent of Police (SSP), Baramulla]
2. Officer R.P Singh, Special Operations Group [SOG], Jammu and Kashmir Police, Harwan

Case Information

On 7 February 2005, Qazi Mohammad Yousuf along with Riyaz Ahmad Shah and Mohammad Abbas Wani, was picked up by the SOG Harwan and specifically Officer R.P.Singh.

A false First Information Report [FIR] no. 24/2005 u/s 7 [Prohibition of acquisition / possession / manufacture / sale of prohibited arms / ammunition] / 25 [Punishment for certain offences] Arms Act, 1959 was filed at the Kothibagh Police Station against them wherein it was stated that grenades were recovered and Qazi Mohammad Yousuf admitted to being affiliated to the Lashkar-e-Taiba¹⁴⁹. Submissions by the police authorities before the High Court place this incident on 14 February 2005. Qazi Mohammad Yousuf was released on bail, on a court order. SP Anand Jain, who was behind the filing of the false FIR, warned the family of Qazi Mohammad Yousuf that Qazi Mohammad Yousuf would be killed. A chargesheet was produced before the court on this FIR on 22 November 2006 before the Forest Magistrate, Srinagar. By communication dated 22 April 2014 from the Jammu and Kashmir Police a copy of the chargesheet dated 21 November 2006 was provided.

On 21 March 2005, Qazi Mohammad Yousuf was again arrested in relation to FIR no.65/2004 u/s 302 [Murder], 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition/possession/manufacture/sale of prohibited arms/ammunition]/27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 at the Harwan Police Station¹⁵⁰.

149 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. On 2 June 2012, a copy of the FIR was provided by the Jammu and Kashmir Police. Further information sought through RTI on 15 October 2013.

150 Information on this FIR was sought through RTI on 5 May 2012. On 2 June 2012, a copy of the FIR was provided by the Jammu and Kashmir Police. Further information sought through RTI on 15 October 2013.

Once again Qazi Mohammad Yousuf was released on bail, on a court order. By communication dated 22 April 2014 from the Jammu and Kashmir Police, information was provided that a foreign militant involved in this case was presently under custody of the Mysore Police [in a different case – FIR no. 165/2006 of Vijay Nagar Police Station, Mysore]. A request was brought before the Chief Judicial Magistrate [CJM], Mysore for change of lodgment of the accused but the petition was rejected and the case remains under investigation.

On 29 October 2005, while Qazi Mohammad Yousuf was on his way to meet his sister, he was abducted by the SOG and killed at the Harwan camp and his body was thrown in a paddy field in Chittarhama. His valuables, including his mobile phone and cash, were stolen from him.

FIR no 61/2005 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition/possession/manufacture/sale of prohibited arms/ammunition]/27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959, was filed at the Zakoora Police Station by the police on 30 October 2005¹⁵¹. By communication dated 22 April 2014 information was provided that the investigation had been closed by declaring the perpetrators as untraced but the final report had not been submitted before a court as of yet.

This FIR states that Qazi Mohammad Yousuf was killed by militants. The FIR was closed by declaring the perpetrators as untraced on 7 April 2006 and reopened in February 2007. Further, the Jammu and Kashmir Police provided information that this case was closed by declaring the perpetrators as untraced on 30 January 2011.

The police refused to file a FIR on behalf of the family of Qazi Mohammad Yousuf with their version of the events.

The family of Qazi Mohammad Yousuf believes that the victim was killed by SP Anand Jain, along with the SOG for non-payment of Rs.3,00,000.

A petition was filed before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 568/2007] for the filing of an FIR¹⁵². The petition remains pending.

The family of Qazi Mohammad Yousuf also approached the State Human Rights Commission [SHRC] and on 29 May 2008 the final decision was given.

The SHRC stated that the claim of the police was contradictory; on one hand claiming Qazi Mohammad

Yousuf had links to militants, and on the other attributing his death to unknown gunmen because of his links to the armed forces.

The SHRC concluded that this was a custodial death and recommended Rs.1,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders].

Following an application filed before the SHRC, one police officer Ishfaq Aalam of Police Station Harwan started to visit the family of Qazi Mohammad Yousuf and asked the victims brother in law to visit the police station. Ishfaq Aalam told the brother in law of the victim that the police would provide a good report to the SHRC if the family of Qazi Mohammad Yousuf withdrew the High Court case. The family of Qazi Mohammad Yousuf refused.

The family of Qazi Mohammad Yousuf gave a statement to the IPTK on 2 December 2012.

SP Anand Jain and Officer R.P.Singh have not been implicated clearly by the SHRC despite the family of the victim testifying against SP Anand Jain.

Strangely, the SHRC confirms the custodial death of Qazi Mohammad Yousuf and reprimands the police for wrongly attributing blame for the crime to unidentified gunmen but has failed to fix the responsibility of the crime either on alleged perpetrators or any other person.

Further, the SHRC while indicting the police investigations should have made recommendations for a separate and independent investigations process particularly as the alleged perpetrators were also of the Jammu and Kashmir Police.

The SHRC, as in other cases, should have also recommended for the filing of a correct FIR and investigations against police officials of the Zakoora Police Station responsible for the filing of the false FIR. The delayed proceedings in the High Court have only resulted in diluting the evidence and perhaps any chance of a successful prosecution.

The faulty and delayed investigations in the case have also cleared the way for SP Anand Jain to be promoted to the level of SSP. To date, despite closing the case, the police has not filed the final report before the competent court. Further, as per publicly available information, he was awarded the Director General of Police's Commendation Medal for 2004, Sher-e-Kashmir Medal for Gallantry in 2004 and 2005 and the Police Medal for Gallantry in 2006.

Based on the SHRC decision, this case exemplifies how the police through their investigations shields perpetrators of crimes and shifts the burden onto "unknown gunmen".

151 Information on this FIR was sought through RTI on 5 May 2012. On 2 June 2012, a copy of the FIR was provided by the Jammu and Kashmir Police. Further information sought through RTI on 15 October 2013.

152 Information on the petition number was sought through RTI on 16 February 2012. Information was provided.

Case No. 165Victim Details

Shakoor Ahmad Deva [Abduction, Torture, Extra-judicial killing]

Age: 24

Occupation: Shopkeeper

Son of: Rafiq Ahmad Deva

Resident of: Shopian.

Alleged Perpetrators

1. Major Krishna, 44 Rashtriya Rifles [RR], Veterinary Camp stationed near Shopian Police Station
2. A. Santhanam, A company, 44 Rashtriya Rifles [RR]
3. Jeela Shah, Government gunman [Ikhwan] [deceased]

Case Information

[The victimization of Shakoor Ahmad Deva is spread across two incidents – 2004 and in 2005. In 2004 he was abducted and released and then subsequently abducted and killed in 2005]

In June 2004, unidentified persons picked up Shakoor Ahmed Deva at around 4 pm. His family initially thought that he might have gone out with his friends, but he did not come back home that night. Consequently, his father went to the police station the next morning to lodge a First Information Report [FIR]. After ten days, the persons who had picked up Shakoor called his family and asked them to come to Srinagar, demanding a sum of Rs. 1 lakh.

Shakoor's father later came to know that the person who had picked up Shakoor was a local Ikhwan called "Jeela Shah". He started towards Srinagar with his relative, namely Bashir Ahmed, and another person, who happened to be Jeela Shah's neighbor and was the one in contact with him. They were later informed not to come to Srinagar but, instead, to move towards Gahlander. Shakoor's father somehow managed to arrange a sum of Rs. 1 lakh and handed it over to Jeela Shah for his son's release. Jeela Shah threatened Shakoor's father, saying that if he disclosed his name, his entire family would be killed. He then informed him that his son would be handed over to him the next day in Srinagar. The next day, Jeela Shah called them again, saying that now they should come to Gahlander instead of Srinagar. At Gahlander, Shakoor's family found Shakoor alone and took him home.

At home, Shakoor revealed that he had been picked up by government agencies. He also said that he had been tortured for around seventeen days, had been severely beaten, and his eyes had been blindfolded for days together. While Shakoor had been missing, his father had filed a complaint at the State Human

Rights Commission [SHRC].

His father later added that his son had no animosity with Jeela Shah and that he was a person known for picking up young boys just for the sake of money. In the police report, out of fear, the family was forced to lie, as Jeela Shah had threatened to kill them, in case his name was disclosed, that is the reason why Shakoor mentioned that he had been abducted by militants. FIR no. 10/2004 was filed at the Shopian police station.

After about one year, on 2 June 2005, Major Krishna came to Shakoor's newly constructed shop near the Masjid at the market, in Shopian. He put his hand on his shoulder and told him that he had some urgent work with him. He asked Shakoor to accompany him to his camp, namely Veterinary Camp, near the police station. Three people who witnessed the incident – Mohammad Iqbal Pandit, Manzoor Ahmed Sofi and Mohammad Sultan – informed Shakoor's family that their son had been picked up by Major Krishna of the 44 RR.

The family then rushed to the police station and met the Munshi, who assured them that their son would be released soon. A relative of theirs, Ghulam Nabi, resided near the army camp and from his house they had spotted Shakoor picking grass with his hands.

After that they went to the veterinary army camp to meet Major Krishna. He assured them that Shakoor would be released soon, and to come tomorrow. The next day, they went to the camp again and were told at the gate that Major Saab would meet them at the gate. He came out to meet them in a civil dress. Shakoor's family went to the camp again, the next morning but was told that Major Saab has gone out for a crackdown and search operation. At around 3 pm that day, Shakoor's father went to the police station but was asked to go home and was told that his son would be released soon.

On his way back home, he saw a lot of people moving towards the Goal Chowk, where some people had gathered around a dead body. A person, Abdul Rashid Bhat, was accompanying Shakoor's father from the police station and told him that some boy had been killed in cross firing and took him home. As soon as he reached home, he heard the news that the boy killed in cross firing was in fact Shakoor and he fell unconscious on hearing about Shakoor's death. There were shutdowns and protests in the village after Shakoor's dead body was brought home. The family stated that there were torture marks all over the dead body.

After around fifteen to twenty days, army personnel visited Shakoor's house some five or six times. The culprit, i.e. Major Krishna had been transferred from the area. The army kept telling Shakoor's father to withdraw the case and offered money as well as a job for his daughter. But he refused saying that the State

has made laws for those who have been killed and that they might be given relief or compensation but what they require the most is justice.

On 29 September, Shakoor's father filed a complaint with the SHRC, in which he mentioned the whole story from June 2004 to June 2005. The final decision of the SHRC came on 10 March 2008, in which the SHRC recommended that the victim's family should be given Rs. 1 lakh, a member of his family should be given compassionate employment under Statutory Rules and Orders number 43 [SRO 43] and the case against the perpetrator should be registered in the court. The family received Rs. 1 lakh from the Deputy Commissioner, Pulwama, and a job under SRO 43. The police never met the family for a statement or for further investigations. They define the army's version of Shakoor's death as baseless because his dead body bore marks of torture and they believe that there is no way that he could have been killed in a mine blast.

After Shakoor's death, the residents of the village did not bury him demanding that an FIR be first lodged against the army personnel and Major Krishna.

The father of the victim, Rafiq Ahmad Deva, gave the above statement to the IPTK on 21 April 2014.

On 4 June 2005, Rafiq Ahmad Deva, son of Abdul Gani, resident of Jan Mohalla, Shopian, lodged a written complaint in Police Station Shopian to the effect that, on 2 June 2005, his son, namely Shakoor Ahmad Deva was picked up from his shop near the Masjid at the market by the troops of 44 RR, headed by Major Krishna; then stationed near Police Station Shopian. His family requested his release from the camp but to no avail. The FIR is 133/2005 under section 302 [murder] of the Ranbir Penal Code [RPC] at police station Shopian. The FIR was filed by A. Santhanam of the A company, 44 RR. Information was sought through RTI dated 15 October 2013. By communication dated 4 November 2013 from Jammu and Kashmir Police a copy of the FIR was provided. A separate RTI was filed on 18 December 2012 to Jammu and Kashmir Police regarding custodial killings in Jammu and Kashmir between 1989 and 2012. By communication dated 11 January 2013 information was provided that a FIR was filed and the alleged perpetrator – Krishna – was responsible. A copy of the FIR was provided.

FIR no. 132/2005 under sections 302 [murder], 307 [attempt to murder] of the Ranbir Penal Code [RPC] and sections 3, 4 Explosive Substances Act. This FIR states that the victim was a source for 44 RR and was killed in a blast while showing them a hideout. Information was sought through RTI dated 14 November 2014. By communication dated 1 December 2014 from the Jammu and Kashmir Police information was provided that investigations in this FIR are ongoing to ascertain the circumstances under which "death of the deceased took place". No documents were provided. The concerned army party

is required to be questioned in the case but the said army camp stands moved to some other unknown place.

The SHRC found the case of the victim to be genuine in its decision dated 10 March 2008. The position of the Jammu and Kashmir police though is uncertain. On one hand they state that the alleged perpetrator – Krishna – was responsible, yet their investigations in the other FIR – filed by the army – appears to be continuing with no final finding.

The case against Major Krishna appears strong although the statements of the other witnesses would need to be recorded. What is beyond doubt is that there is enough material available for the police to indict Major Krishna. A. Santhanam's role would also have to be investigated as he is the person who filed the FIR – which based on the above evidence of the FIR was clearly a false FIR. It is uncertain whether his role extended beyond filing of the FIR. Finally, the role of Jeela Shah in the extra-judicial execution is not made out per se. But, due to his past involvement – in abducting the victim – any investigation into the killing of the victim would necessarily involve an investigation into Jeela Shah of how Jeela Shah may have created the initial victimization of Shakoor Ahmad Deva which perhaps led to him being profiled in the army records.

Case No. 166

Victim Details

1. Sahbir Ahmad Shah [Extra-Judicial Killing]
Age: 21
Occupation: 12th Standard student
Son of: Mohammad Akbar Shah
Resident of: Shah Mohalla, Palhalan, Pattan, Baramulla District
2. Aijaz Ahmad Dar [Extra-Judicial Killing]
Age: 18
Occupation: 12th Standard student
Son of: Ghulam Mohammad Dar
Resident of: Palhalan Pattan, Baramulla District

Alleged Perpetrators

1. Major Lamba, 29 Rashtriya Rifles [RR], Army, Camp Wussan, Pattan

Case Information

On 12 November 2005, Sahbir Ahmad Shah and Aijaz Ahmad Dar were used as human shields in an encounter between personnel of the 29 RR and militants. They were taken forcibly from the High School, Palhallan where the villagers were gathered by the army during a search operation in the village.

They were ordered to accompany the army for the search of Mohammad Sultan Ganai's house in Palhallan village. The army had information regarding

militants at that house. The army searched the house thrice, and on the third occasion, Major Lamba entered the house with both the victims. As soon as they reached the first floor some bullet shots were fired inside the house and the troops in the courtyard started indiscriminate firing at the house.

Sahbir Ahmad Shah was killed on the spot. Aijaz Ahmad Dar was wounded along with Major Lamba. They were rushed to a Srinagar hospital but only Major Lamba was taken inside while Aijaz Ahmad Dar was left outside. Aijaz Ahmad Dar subsequently died. The family of the victims went to the Pattan Police Station but found that the army had already filed a FIR stating that the two victims were killed in cross-firing.

The army approached the families with documents – which would suggest non-involvement of the army – to sign. Further an offer of Rs.6,00,000 for each family was made. The documents stated the non-involvement of the army and that the victims had been missing for a few days before the incident. The families of the victims made changes to the documents effectively implicating the army in the killings. They were allegedly signed by the families and the Village Committee and then taken to the 29 RR at Wusun Pattan Camp. The army was upset and subsequently raided the houses of the families of the victims on grounds of harboring militants. Aijaz Ahmad Dar's brother, Riyaz Ahmad, who ran a shop, had also been harassed by the army.

The family of Sahbir Ahmad Shah gave a statement to the IPTK on 15 December 2011.

The army filed First Information Report [FIR] no.200/2005 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition / possession / manufacture / sale of prohibited arms/ammunition] / 27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 at the Pattan Police Station. The FIR was filed on 14 November 2005. The FIR states that death of the two victims was due to bullet injuries. The victims were not linked to any militant organization or political party. The FIR also states that the 29 RR had a crackdown in Palhallan on 12 November 2005. Then was a search of the houses. The army took the two victims for a search. There was firing between the militants and the army¹⁵³. By communication dated 22 April 2014 from the Jammu and Kashmir Police a copy of the FIR and closure report were provided. But, it was stated that the final report was unavailable. By communication dated 6 January 2015 it was stated that the case was closed on 31 March 2006 and that the casefile was enclosed.

The families of the victim intended to file a petition

before the High Court of Jammu and Kashmir but did not do so due to fear.

Also, on record is a letter from the Senior Superintendent of Police, Baramulla to the District Magistrate, Baramulla stating that the victim was not involved in subversive activities, but the letter refers to "cross-firing".

Available documents from the Ministry of Defence do not mention this case at all, thereby suggesting that the case was never sent for sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA]. This is in keeping with the fact that the police closed the case.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 167

Victim Details

1. Aamir Akbar Hajam [Extra-Judicial Killing]
Age: 9
Son of: Mohammad Akbar Hajam
Resident of: Doodhipoora, Handwara, Kupwara District
2. Ghulam Hassan Bhat [Extra-Judicial Killing]
Age: 18
Son of: Ghulam Rasool Bhat [deceased]
Resident of: Doodhipoora, Handwara, Kupwara District
3. Shakir Hassan Wani [Extra-Judicial Killing]
Age: 10
Occupation: 3rd Standard student
Son of: Ghulam Hassan Wani
Resident of: Doodhipoora, Handwara, Kupwara District
4. Abdul Samad Mir [Extra-Judicial Killing]
Age: 26
Son of: Mohammad Ahsan Mir
Resident of: Doodhipoora, Handwara, Kupwara District

Alleged Perpetrators

1. Captain [presently Major] Nitin Dutta alias Rambo/Aijaz Khan [both operational names], 33 Rashtriya Rifles [RR], Army, Camp Doodhipora, Tikri
2. Subedar Birkha Raj, 33 Rashtriya Rifles [RR], Army, Camp Doodhipora, Tikri
3. Rifleman Dhiraj Bharti, 33 Rashtriya Rifles [RR], Army, Camp Doodhipora, Tikri
4. Rifleman Deep Bahadur, 33 Rashtriya Rifles [RR], Army, Camp Doodhipora, Tikri
5. ALD Chanchal Singh, 33 Rashtriya Rifles

¹⁵³ Information on these FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

- [RR], Army, Camp Doodhipora, Tikri
 6. SWR Ram Singh, 33 Rashtriya Rifles [RR],
 Army, Camp Doodhipora, Tikri

Case Information

On 22 February 2006 at about 1:00 pm, a 33 RR patrol party came from the Sheep Camp and the Doodhipora, Wadder Camp towards the village. The patrol party was headed by Captain Rambo. The patrol went towards Abdul Samad Mir's house. Abdul Samad Mir fled from his house towards the nearby ground and the party chased after him and fired upon him. He died on the spot. The children who were playing on the ground started to run as well towards a nearby stream. While the elder children were able to cross the stream, the younger children were unable to do so. Shakir Hassan Wani and Aamir Akbar Hajam were unable to cross the stream and Ghulam Hassan Bhat picked them up in his arms and was trying to take them across the stream when Captain Rambo opened fire on them. Shakir Hassan Wani and Ghulam Hassan Bhat died on the spot. Aamir Akbar Hajam was injured and taken to the Handwara Hospital. On the way to the hospital he told people that the other two boys had been killed by the army. He succumbed to his injuries.

The police came at around 3:00 pm. Until then the army had cordoned off the area and had not allowed the villagers close to the bodies. Captain Rambo attempted to put a pouch with grenades on the body of Abdul Samad Mir but the police prevented this.

Following the filing of a case, the army attempted to persuade the families of the victims to withdraw the case on numerous occasions. During the investigation of the case, the Investigating Officer Khazir Mohammad took blank, signed [by signature or by thumb print] statements from the fathers of three victims [all except from the father of Abdul Samad Mir]. Subsequently, the families drafted an application raising this issue and showed it to the Investigating Officer and threatened to file it. On this, the blank statements were returned by the Investigating Officer.

The family of Shakir Hassan Wani gave a statement to the IPTK on 15 February 2012.

First Information Report [FIR] no.20/2006 was filed at the Handwara Police Station on 23 February 2006¹⁵⁴. The FIR mentions the alleged perpetrator as the accused in this case. The families of the victims gave their statements to the police during the investigation.

The families of the victims testified before the

Government appointed enquiry, which was conducted by Judge Naqshbandi, District Judge. The families of the victims state that the army did not cooperate with the enquiry. Further, the enquiry was never concluded.

The families of the victims received Rs.1,00,000 ex-gratia relief each and compassionate employment under SRO-43 [Statutory Rules and Orders].

The families of the victim filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 912/2012]. A status report was submitted by the Jammu and Kashmir Police in September 2012 that confirmed that the alleged perpetrator was on duty at the concerned location on the date of occurrence of the event in question.

Further, that the investigations had been stalled by the non-cooperation of the army. The Ministry of Defence and the alleged perpetrator submitted their joint response in September 2012. The response confirmed that an operation did take place on that day based on information relating to the presence of militants. The militants escaped along with "Abdul Samad Mir @ Rahil" an established over-ground worker. The civilians were killed due to the indiscriminate firing by the "terrorists" or in cross-firing. Two soldiers also sustained injuries. Abdul Samad Mir's body was found "with pouch and war like stores". FIR no. 18/2006 was filed at the Handwara Police Station by the army. Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 15 October 2013. By communication dated 9 December 2013 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI dated 14 November 2014. The FIR states that a legitimate encounter took place following firing from militants. It is stated that injuries were sustained by Rifleman Dheeraj Bharatee and Rifleman Deep Bahadur Thapa. It was also stated that due to the militants firing, one civilian and one child were killed, while another child was severely injured. The injured child subsequently succumbed to injuries. Subsequently, a body of a militant was found, and near him was found arms and ammunitions. The militant was identified as Abdul Samad Mir, who had earlier been booked under "FIR No. 2052/10/1/FIRGS (Ops)"¹⁵⁵ for possession of a radio set, Kenwood model, and was released on bail on 15 September 2005. He was confirmed to be an active financial conduit for the Lashkar-e-Taiba. An army Court of Inquiry exonerated the army of any liability in the incident. Subsequent status reports filed before the High Court summarize the position of investigations as follows:

¹⁵⁴ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. By communication dated 9 December 2013 it was stated that investigations are ongoing and a copy of the FIR was provided. Further information sought through RTI dated 14 November 2014.

¹⁵⁵ Further information sought through RTI dated 14 November 2014. By communication dated 19 December 2014 from the Jammu and Kashmir Police information was provided that further specific information on the FIR number needed to be provided before information could be ascertained and provided.

- Two personnel ALD Chanchal Singh and SWR Ram Singh appeared before the police and stated that on the day of occurrence they were under the command of Nitin Dutta and were in two parties as they went to Doodhipora village. One party was led by Captain Nitin Dutta and the other was kept under the control of Subedar Birkha Raj. This is the team that was involved.
- Captain Nitin Dutta [now Major] appeared and admitted that he headed the operation. But, like the other witnesses he says they only did retaliatory firing.
- The police is seeking the attendance of Subedar Birkha Raj, Rifleman Dhiraj Bharti and Rifleman Deep Bahadur. Subedar Birkha Raj is in Nepal.

The petition remains pending.

It is noteworthy that despite the passage of six years, no investigations or prosecutions appear to have been conducted or concluded by the Jammu and Kashmir Police.

The response of the Ministry of Defence and the alleged perpetrator appears convenient, unclear and highly unreliable. For example, the names of soldiers injured are nowhere on record.

Further, the response before the High Court alternates between blaming the “terrorists” for the death of the civilians and cross-firing. Therefore, an extra-judicial killing of four persons, including two minors, has been completely covered up and ignored. Most importantly though the police investigations have confirmed the command and control of Captain Nitin Dutta [in fact he accepts it as well]. This along with the testimonies of the families is a strong indictment.

Case No. 168

Victim Details

1. Mushtaq Ahmad Zarger [Abduction, Wrongful Confinement, Torture and Extra-Judicial Killing (Fake Encounter)]
Son of: Mehad Joo
Resident of: Sangla, Surankote, Poonch District
2. Mohammad Rashid Chopan [Abduction, Wrongful Confinement, Torture and Extra-Judicial Killing (Fake Encounter)]
Son of: Ghulam Mohammad
Resident of: Bafliaz, Surankote, Poonch District

Alleged Perpetrators

1. Colonel Dharmender Gupta, Deputy Brigade Commander, 6-Sector, Rashtriya Rifles [RR], Army, Potha, Surankote

2. Colonel P.S.Gothra, Commanding Officer, 25 Rashtriya Rifles [RR], Army, Draba, Surankote
3. Officer, Liason Agency, 82nd Battalion Border Security Force [BSF], Surankote [as of 2006]

Case Information

Abdul Rashid Zarger, the uncle of Mushtaq Ahmad Zarger, had filed complaints to various quarters, including the Chief Justice of the High Court of Jammu and Kashmir, against Colonel Dharmender Gupta, for implicating him in a false case and for harassment and intimidation.

The Chief Justice of the High Court thereafter ordered an enquiry by the Principal District and Sessions Judge, Poonch District. Mushtaq Ahmad Zarger was to appear as a witness before this enquiry on 22 August 2006, but before that was called by Colonel P.S.Gothra, Commanding Officer, 25 RR and an Officer of the Liason Agency, 82nd Battalion BSF to the Draba camp.

Mushtaq Ahmad Zarger was threatened and told that if he testified he would face dire consequences. Further, he was offered Rs.40,000 to not testify but he refused. His evidence was then fixed for 14 October 2006. Threats were also received by Abdul Rashid Zarger, who was provided security by a 5 May 2006 order issued by the District and Sessions Judge, Poonch District.

Also, on record is a petition from Abdul Rashid Zarger, addressed to the State Human Rights Commission [SHRC], that alleged threats and torture by Colonel Dharmender Gupta.

On 1 September 2006, Mushtaq Ahmad Zarger and Mohammad Rashid Chopan, were leaving Pakherpora after they had attended a marriage ceremony. While boarding a bus at the Pakherpora bus stand both of them were picked up by Colonel Dharmender Gupta, tortured for five days, and killed in a fake encounter at Akal Rajpora, Pulwama.

The police filed First Information Report [FIR] no.146/2006 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition/possession/manufacture/sale of prohibited arms/ammunition]/27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959, at the Rajpora Police Station based on sources that claimed that two militants had been killed in cross-firing with armed forces and arms and ammunitions were recovered. Further information sought through RTI dated 14 November 2014. By communication dated 2 May 2015 information was provided that this case was closed by declaring the perpetrators as untraced and copies of FIR and final report were provided [information was also provided by communication dated 28 April 2015].

The family of the victims filed a petition before the High Court [Original Writ Petition (OWP) 759/2006] seeking the registration of a FIR, investigations and prosecutions¹⁵⁶. An application was also moved seeking the investigations to be conducted by the Central Bureau of Investigations [CBI].

On 5 December 2006, the Government of Jammu and Kashmir and police authorities responded to the petition. It was stated that during the course of investigations of FIR no.146/2006 it was proved that the victims were militants who were killed in retaliatory action by the 82nd Battalion BSF. The investigations were ongoing. Further, it was stated that they were intimidated by the Surankote Police Station that Mushtaq Ahmad Zarger was the “upper ground worker” of the Hizbul Mujahideen. FIR no.7/2000 u/s 212, 120 [Concealing a design to commit an offence] Ranbir Penal Code, 1989 [RPC] was registered against him, presumably at Surankote Police Station, and presented before the court on 21 February 2000. He was also detained for two years at Central Jail, Jammu under the Public Safety Act, 1978 [PSA]. He was also involved in FIR no.14/2006 u/s 307 [Attempt to murder], 120-B [Criminal Conspiracy] Ranbir Penal Code, 1989 [RPC] at Surankote Police Station. Mohammad Rashid Chopan was said to be a close associate of Mushtaq Ahmad Zarger, and informed him of armed forces movements.

The Commandant, 82nd Battalion BSF responded to the petition and provided similar arguments that the victims were militants. Further, it was also stated that Mushtaq Ahmad Zarger had been arrested in FIR no. 6/2002 in May 2002 and was lodged at the Surankote Police Station. Colonel Dharmender Gupta submitted that Abdul Rashid Zarger was contacted by him as he had been in touch with two terrorists who were killed in an encounter on 22 February 2006.

Further, that Mushtaq Ahmad Zarger was never a prosecution witness before the enquiry set up. In fact, he was a defence witness. He was never threatened. The other submissions made by Colonel Dharmender Gupta are similar to the ones made by the other respondents.

On 24 August 2012, the Principal District and Sessions Judge, Poonch District submitted to the High Court that the enquiry had been stayed pending the result of the matter before the SHRC. The High Court petition remains pending.

Information on FIR's 146/2006, 7/2000 and 14/2006 was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 15 June 2012 from the Jammu and Kashmir Police information was provided that FIR no.7/2000 was chargesheeted, whereas the case in relation to FIR no.14/2006 was closed by declaring the

perpetrators as untraced. FIR 146/2006 was also closed as untraced as per RTI information. Further information sought through RTI on 15 October 2013 on all the FIRs. Further information on FIRs 7/2000 and 14/2006 was sought through RTI dated 14 November 2014. Further, on 15 October 2013 information was also sought on FIR no. 6/2002. Further information sought through RTI dated 14 November 2014. By communication dated 10 January 2015 it was stated that the final report of 7/2000 was unavailable.

According to the family of the victims, the judicial enquiry conducted on the orders of the Chief Justice of the High Court has not been completed to date. This is confirmed by the 24 August 2012 submission by the Principal District and Sessions Judge, Poonch District. No copy of the enquiry report is on record.

Further, the Ministry of Defence has yet to file objections to the High Court petition despite the passage of six years.

The delay in the conclusion of the proceedings in the judicial enquiry and the High Court petition effectively ensures continued impunity to the alleged perpetrators.

Case No. 169

Victim Details

Abdul Rehman Padder [Abduction and Extra-Judicial Killing (Fake Encounter)]

Age: 36

Occupation: Carpenter

Son of: Ghulam Rasool Padder

Resident of: Drawai, Nyamatpora, Larnoo, Kokernag, Islamabad District

Alleged Perpetrators

1. Senior Superintendent of Police [SSP] Hans Raj Parihar, Ganderbal, Jammu and Kashmir Police
2. Deputy Superintendent of Police [DSP] Bahadur Ram Kaith, Special Operations Group [SOG], Jammu and Kashmir Police
3. Assistant Sub-Inspector [ASI] Farooq Ahmad Gudoo, In-charge Special Operations Group [SOG], Jammu and Kashmir Police, Camp Sumbal
4. Farooq Ahmad Padder, Source for Senior Superintendent of Police [SSP] Hans Raj Parihar
5. Manzoor Ahmad Malik, Special Operations Group [SOG], Jammu and Kashmir Police, Camp Sumbal
6. Bansi Lal, Personal Security Officer [PSO] of DSP Bahadur Ram Kaith
7. Zaheer Abass Choudhary, Special Operations Group [SOG], Jammu and Kashmir Police,

¹⁵⁶ Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. Information was provided.

Camp Sumbal

Case Information

The family of Abdul Rehman Padder states that on 8 December 2006 the victim called his sister at about 9:00 am and informed her that following his noon prayers at the Hazratbal shrine he would meet Farooq Ahmad Padder at his rented residence in Chitrashahi, Batamaloo, regarding a job opportunity for which the victim had paid Rs.75,000. The victim stated that he would call once again at 2:00 pm. When the victim did not call at the promised time, the family of the victim began their search for him. A colleague of the victim, Ghulam Ahmad Wani, informed the family that on that day he went along with the victim to the Batamaloo market, following which the victim informed him that he was to go and meet Farooq Ahmad Padder regarding a job opportunity. This was at about 2:00 pm. Following this, the family of the victim contacted Farooq Ahmad Padder and inquired about the victim. Farooq Ahmad Padder assisted them by taking them to various places to look for the victim. On 14 December 2006, on the suggestion of Farooq Ahmad Padder, the family approached the Batamaloo Police Station and filed a missing report.

Following investigations, the family learnt that Farooq Ahmad Padder had been responsible for the abduction of the victim and he had received Rs. 1,20,000 from the other alleged perpetrators for his role in the abduction.

Subsequently, in January 2007, the body of the victim was exhumed from a graveyard in Sumbal, Bandipora District. Abdul Rehman Padder was killed in a fake encounter by the alleged perpetrators, buried and given the false identity of Abu Hafiz, a foreign militant. Following the arrest of Farooq Ahmad Padder, the family of the victim faced threats and intimidation from his family.

The family of Abdul Rehman Padder gave a statement to the IPTK on 2 February 2012.

First Information Report [FIR] no. 133/2006 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition / possession / manufacture / sale of prohibited arms/ammunition] / 27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 was filed at the Ganderbal Police Station on 9 December 2006 wherein the deceased Abu Hafiz, resident of Multan, Pakistan, was shown to have been killed in an

encounter¹⁵⁷.

The 9 July 2012 communication from the Jammu and Kashmir Police states that investigations were carried out by the then Superintendent of Police [SP] South, Srinagar and were closed as not admitted. The closure report confirms that the case is closed and a reference is made to the ongoing proceedings in FIR no. 6/2007.

Following a missing report filed in the Batamaloo Police Station, FIR no. 6/2007 u/s 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at the same Police Station on 23 January 2007 regarding the abduction of the victim and a Special Investigation Team was constituted to investigate the case¹⁵⁸.

On 8 March 2007 a charge sheet against the above listed alleged perpetrators was submitted before the Senior District and Sessions Judge, Srinagar. The trial is ongoing. SSP Hans Raj Parihar and DSP Bahadur Ram Kaith filed criminal transfer applications before the High Court, Jammu and Kashmir, seeking that the trial be transferred out of Kashmir, to Jammu or any other jurisdiction. The reasons provided were lack of legal assistance in Kashmir and the prejudicial atmosphere in Kashmir against them. On 25 April 2007 the applications were not granted and were dismissed¹⁵⁹.

The family of the victim received ex-gratia government relief of Rs. 1,00,000. The SSP, Anantnag, conducted a verification of the victim and found on 3 January 2007 that he was not involved in any militant or subversive activities and there was nothing adverse on record against him. A similar report was submitted by the SSP, Srinagar on 28 April 2007. The family of the victim also states that they are litigating the issue of compensation before the High Court.

The Justice [retired] M.L.Koul commission was constituted to enquire into the instant case, along with others, in 2007, but was shut down in 2008 with no conclusion.

In response to a RTI on Home Department empowered committee on SHRC recommendations, the Home Department by communication dated 24 March 2014 provided information on other cases, including the instant one. It was taken up in the 12th meeting on 24 June 2010. Here the Home department states that the SHRC decision was for "Monetary relief or appointment under SRO 43". The Home

157 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 9 July 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. By communication dated 2 December 2013 from Jammu and Kashmir Police a copy of the closure report was provided. By communication dated 2 May 2014 from the Jammu and Kashmir Police a copy of the FIR and closure report were once again provided. By communication dated 18 December 2014, once again a copy of the FIR and closure report were provided with information that the case had been closed as not admitted.

158 Information on this FIR was sought through RTI on 5 May 2012. By communication dated 2 June 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

159 Hans Raj Parihar and Anr. v. State, 2008 CriLJ 2673.

department states that the recommendation was accepted.

The charge sheet in the case forms the only document on record for the purposes of analysis. The Special Investigation Team based its investigations on the tracking of the cell phone used by the victim [through the IMEI number] and witness statements collected. The main findings by the Special Investigation Team, as recorded in the charge sheet, are as follows¹⁶⁰:

- On 6 December 2006, AP 1, 2, 3 and 4 held a meeting at the official residence of AP1 at the SOG Camp, Ganderbal. AP1 paid some amount of money to AP4. Following this payment of money to AP4, AP3 was in continuous contact with him until 8 December 2006.
- AP4 contacted the victim from 6 December 2006 to 8 December 2006 and arranged for his presence at Batamaloo, Srinagar.
- On the afternoon of 8 December 2006, AP6 instructed AP5 to pick up the victim who was walking along with AP4. At this point, in addition to AP4 and the victim, AP 5, 6 and 7 were present. Subsequently, the cell phone of the victim was handed over to AP3.
- The victim was taken to the SOG Camp, Sumbal and specifically to the personal office room of AP3. After some time AP2 also reached the location and went to the personal office room of AP3. After an hour or so, AP2 left Camp Sumbal and headed towards Ganderbal.
- On 8 December 2006 at about 8:00 pm, AP3 directed his men at SOG Camp Sumbal to be prepared for an operation. The victim was made to wear a "Khan dress and a Pheran". His hands were tied. A pouch carrying magazines and a diary purportedly written by the victim were also tied around his waist. The victim was then taken to village Waksoora, Ganderbal by AP 3, 5, 6 and 7 and other personnel of the SOG. The victim was taken to an orchard in the village. At about 11:00 pm the victim was shot by AP5. AP5 on finding the face of the victim not disfigured, and identifiable, instructed AP7 to open fire on the face of the victim. The instructions were carried out. At 11:10 pm, following the killing of the victim, AP3 contacted AP2. An AK-series weapon along with a grenade and wireless set brought from the SOG Camp, Ganderbal were kept beside the body of the victim to show that the victim was a Pakistani terrorist.
- On 9 December 2006 at about 3:00 am the body of the victim was taken to the SOG Camp Sumbal and kept there till the morning. On 9 December 2006, FIR no. 133/2006 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [R P C] and 7 [P r o h i b i t i o n o f acquisition/possession/manufacture/sale of

prohibited arms/ammunition]/27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 was filed at the Ganderbal Police Station wherein the deceased Abu Hafiz, resident of Multan, Pakistan, was shown to have been killed in an encounter.

- A cash reward of Rs. 1,00,000 was paid to the encounter party.
- On 1 February 2007 the body of the victim was exhumed. DNA experts from CFSL, Chandigarh submitted their opinion that the body was that of Abdul Rehman Padder.
- The ammunition of the AK-Series shown to have been recovered from the alleged Pakistani terrorist was found to bear the same number as that of the ammunition issued to the SOG Sumbal Camp.
- The seven alleged perpetrators were arrested.

Based on the above findings the Special Investigation Team concluded that a criminal conspiracy was hatched in December 2006 by the alleged perpetrators to kill the victim with the object to receive "appreciation, cash rewards, besides retaining their posting at lucrative places". The cash reward of Rs. 1,00,000 received by AP1 and 2 was distributed amongst all the alleged perpetrators.

Further, it was found that AP4 had assisted the family of the victim in the search of the victim only for the purposes of escaping criminal liability and gaining sympathy. FIR no. 133/2006 was closed as not admitted and the final report of the case was submitted before Chief Judicial Magistrate, Srinagar on 27 February 2007.

Finally, the Special Investigation Team also states that "the investigation has also found and detected serious defaults on part of the officers/officials of DPL [District Police Lines] Srinagar and Police Station Ganderbal against whom a departmental enquiry has been recommended".

The charge sheet filed above in this instant case serves as a categorical indictment not just on the specific alleged perpetrators but also on the state of affairs in the Jammu and Kashmir where cash rewards have served to incentivize extra-judicial executions.

The brazenness of the circumstances is further highlighted by a reference in the charge sheet to a further attempt to cover up the killing.

The charge sheet states that soon after the matter of the fake encounter was discovered, AP1 managed, on 4 January 2007, to write an application to the Home Minister of the State, endorsed by the Member of the Legislative Assembly of Pampore, in the name of the

160 The alleged perpetrators are referred to as AP followed by the number as listed above.

victim and purportedly bearing his thumb print. This was done to create the impression that the victim was alive.

The preliminary investigations in this case suggest that other people could have been killed in a similar manner for awards and other incentives and buried into unmarked, unidentified graves in Jammu and Kashmir.

Of particular significance in the case of alleged perpetrator Hans Raj Parihar is that he was implicated in other cases, which are referred to in this report, and yet he received, as per publicly available information, the Director General of Police's Commendation Medal for 2001.

Case No. 170

Victim Details

Identity not ascertained [Extra-Judicial Killing]

Alleged Perpetrators

1. Colonel Joneja, 49 Rashtriya Rifles [RR], Army

Case Information

The Ministry of Defence, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 10 January 2012 that on 17 December 2006 there was a killing by shooting.

First Information Report [FIR] no. 131/2006 was filed.

Sanction for prosecution was declined on 8 March 2011. Further, it was stated that: "no officer by the name of Colonel Joneja was ever borne on the strength of 49 Rashtriya Rifles. Therefore, question of involvement of Colonel Joneja in the case does not arise".

The Jammu and Police investigations in the case are not with the IPTK and therefore the decline of sanction for prosecution under AFSPA cannot be appropriately analyzed. No proof is provided by the Ministry of Defence for its reason for decline of sanction for prosecution.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir five years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 171

Victim Details

Showkat Ali Mughal [Abduction, Torture and Extra-Judicial Killing (Custodial Killing)]
Son of: Haji Mohammad Lateef Mughal
Resident of: Chaprian, Rajouri District

Alleged Perpetrators

1. Showkat Ali Malik, Station House Officer [SHO], Rajouri Police Station, Jammu and Kashmir Police
2. Gyan Singh, Investigating Officer, Rajouri Police Station, Jammu and Kashmir Police
3. Constable Mohammad Razak, Jammu and Kashmir Police
4. Tasaduk Hussain, Jammu and Kashmir Police

Case Information

Showkat Ali Mughal was killed in custody by the alleged perpetrators. Showkat Ali Mughal was arrested from his house on 13 February 2007 in connection with some theft and during torture he collapsed and was taken to the District Hospital Rajouri where he was declared dead.

An enquiry was conducted by K.K.Sharma, Additional District Magistrate, Rajouri. It was concluded that Showkat Ali Mughal had died due to a cardiac arrest attributed to fear and exposure to severe cold.

The family of Showkat Ali Mughal approached the State Human Rights Commission [SHRC] on 19 February 2007 and a final decision was delivered on 9 July 2008. Rs.2,00,000 ex-gratia government relief was recommended.

The SHRC arrived at its decision by considering reports from the police.

The SHRC first considered the report of the Deputy Inspector General of Police [DIG], Rajouri / Poonch Range which based its conclusions on the report of the Additional District Magistrate, Rajouri.

Also considered was the enquiry report by the Inspector General of Police [IGP], Jammu Zone that reported that the person in custody was confronted with evidence gathered by the police and he must have been frightened of the consequences which caused his cardiac arrest resulting in death. It further also stated that death is not attributed to torture.

The report of the Additional District Magistrate, Rajouri refers to the testimony of the following witnesses: Sakeena, mother of the victim, Mohammad Rashid, Abdul Khaliq, Khadam Hussain

and Mohammad Saleem. These witnesses categorically stated before the enquiry officer as to how Showkat Ali Mughal was arrested by the police and how they approached them for his release and in what manner they were avoided till they learnt about his death in custody. Further, that they made an effort to take him to hospital where he was declared dead. The medical report also suggested death by heart attack by fear/fright or sudden exposure to severe cold.

The SHRC concluded that the statement of witnesses before the enquiry officer constituted credible evidence and the medical report also suggested that Showkat Ali Mughal had died in the police custody. Emphasis was placed on the fact that the death had taken place in custody.

The report of the Additional District Magistrate, Rajouri was strongly criticized. Further, the SHRC stated that Showkat Ali Mughal was a “hale and hearty person”. The alleged perpetrators were found liable for the death of Showkat Ali Mughal.

It is noteworthy that despite the passage of five years, and the SHRC order, no investigations or prosecutions appear to have conducted or concluded by the Jammu and Kashmir Police. This has effectively helped the perpetrators of the crime evade justice.

Case No. 172

Victim Details

1. Reyaz Ahmad Bhat [Abduction and Extra-Judicial Killing]
Son of: Mohammad Ismail Bhat, Saleema
Resident of: Shamishwari, Kalashpora, Srinagar
2. Manzoor Ahmad Shergojri [Wagay] [Abduction and Extra-Judicial Killing]
Age: 15/16
Son of: Ghulam Qadir
Spouse: Mugli
Resident of: Naina Batpora, Pulwama district
3. Sartaj Ahmad Ganai [Abduction and Extra-Judicial Killing]
Son of: Ghulam Qadir
Resident of: Tikipora, Shopian district
4. Identity not ascertained [Abduction and Extra-Judicial Killing]

Alleged Perpetrators

1. Hilal Ahmad Sheikh, resident of Madina Colony, Bemina, Civilian
2. Ajaz Ahmad, brother of Hilal Ahmad Sheikh, Civilian
3. Showkat Ahmad Mir, brother in law of Hilal Ahmad Sheikh, Inspector in the Vigilance Department
4. Assistant Sub-Inspector [ASI] Tariq, Duty Officer, S.R.Gunj Police Station, Jammu and

Kashmir Police

5. Ghulam Rasool, Station House Officer [SHO], S. R. Gunj Police Station, Jammu and Kashmir Police
6. Commandant, 47 Rashtriya Rifles [RR], Army [as of April 2007]
7. Mohammad Younis, Special Operations Group [SOG], Jammu and Kashmir Police, Gungbugh
8. Mohammad Shafi, Special Operations Group [SOG], Jammu and Kashmir Police, Gungbugh
9. Qamar-ud-Din, Station House Officer [SHO], Kupwara Police Station, Special Operations Group [SOG], Jammu and Kashmir Police, Gungbugh

Case Information

The four victims were killed. Armed forces claimed to have killed four militants on 29 April 2007.

The family of Reyaz Ahmad Bhat state that he went missing on 25 April 2007. His sister, Sabia, was married to Hilal Ahmad Sheikh. Sabia was at her parent's residence on that day. Hilal Ahmad Sheikh came to the house along with his brother Ajaz Ahmad. There was a fight in which Reyaz Ahmad Bhat intervened. Reyaz Ahmad Bhat left the house along with Hilal Ahmad Sheikh and Ajaz Ahmad and has disappeared since. A few minutes later, the police arrived and the brother of Reyaz Ahmad Bhat, Javed Ahmad Bhat was taken to the S.R.Gunj Police Station.

Subsequently, the father of the victim and two others were also arrested and brought to the police station. All of them were beaten at the police station. At this point, Showkat Ahmad Mir, an Inspector in the Vigilance Department and brother in law of Hilal Ahmad Sheikh was present in the police station. Tariq, the Duty Officer at the police station was the person administering the beatings. On the fifth day of the arrest, Javed Ahmad Bhat heard Ghulam Rasool, SHO, S.R.Gunj Police Station, tell someone on the phone that “Reyaz” had been “hit” in Nowgam. Javed Ahmad Bhat was finally released on 1 May 2007. By this time, the others had been released as well.

On 2 May 2007, Javed Ahmad Bhat received an anonymous phone call informing him that his brother had been killed at Kandi, Kupwara. A similar phone call was received on the following day as well. Javed Ahmad Bhat went to the SHO, S.R.Gunj Police Station to file an FIR but the SHO, Ghulam Rasool, refused to do so.

On 9 November 2007, Javed Ahmad Bhat visited the Kupwara Police Station where he was shown photographs of the 29 April 2007 encounter. While he was not certain, he seemed to recognize the picture of his brother. The body of Reyaz Ahmad Bhat was not exhumed as much time had already passed.

The family of Manzoor Ahmad Shergojri states that he went missing on 7 September 2006 when he had gone to collect sand from the Jhelum river. Subsequently, they received information that Manzoor Ahmad Shergojri had been buried at Sangalnar, Kandi, Kupwara District. A missing persons report was filed at the Lassipora Police Post.

According to media reports, the family of Sartaj Ahmad Ganai revealed to the media that he had gone missing from his house one month before his killing, regarding which the family had filed a missing report in the Shopian Police Station.

The body of Manzoor Ahmad Shergojri was exhumed and identified, and determined to be a local citizen. The body of Sartaj Ahmad Ganai was exhumed, and was identified as a local militant. An affidavit on record from the family of Sartaj Ahmad Ganai accepts that he was a militant.

The family of Manzoor Ahmad Shergojri gave a statement to the IPTK on 16 February 2012. The family of Reyaz Ahmad Bhat gave a statement to the IPTK on 28 February 2012.

First Information Report [FIR] no.101/2007 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition / possession / manufacture / sale of prohibited arms / ammunition] / 25 [Punishment for certain offences] Arms Act, 1959 was filed by the army at Kupwara Police Station on 29 April 2007¹⁶¹. By communication dated 25 April 2014 from the Jammu and Kashmir Police a copy of the FIR was provided. The FIR states that the 47 RR alongwith alleged perpetrators 7 and 8 launched an operation in which four Pakistani militants were killed. The FIR is filed by a Major Adjutant of the 47 RR. By communication dated 10 December 2014 a copy of the FIR and investigation documents were provided.

A petition was filed by the family of Reyaz Ahmad Bhat before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 842/2008] for compensation and investigations¹⁶². Mohammad Younis, SOG, Gungbaug and Qamar-ud-Din, SHO, Police Station Kupwara are held responsible in the petition for the actual killing of the victims along with Hilal Ahmad Sheikh and Ajaz Ahmad. Further, the petition refers to a statement by Senior Superintendent of Police [SSP], Neeraj Kumar where he admits that the two bodies exhumed were local persons. While the FIR filed refers to the victims as foreign militants, in the reply affidavit by Respondents 1 and 2 [Union of India and Commandant, 47 RR] it is stated that three of the four persons were Indian citizens. Further, this affidavit states that an operation was carried out on

29 April 2007 based on information from a source of SSP, Kupwara. The petition remains pending.

The family of Manzoor Ahmad Shergojri approached the State Human Rights Commission [SHRC]. The SHRC relied on the report of the Director General of Police [DGP], Jammu and Kashmir dated 25 February 2008 that confirmed that Manzoor Ahmad Shergojri had gone missing on 7 September 2006, but stated that the victim was a member of the Lashkar-e-Taiba and had been killed in an encounter on 29 April 2007 with the army and SOG, along with three other militants. Arms and ammunition were recovered. No relief was therefore granted by the SHRC.

The families of Manzoor Ahmad Shergojri and Reyaz Ahmad Bhat received no relief or compensation.

The contradiction between the FIR, which states that all four victims were foreign militants, and the submissions before the High Court which concede that three of the victims were locals, raise serious doubts on the entire encounter carried out by the army.

Further, despite the passage of five years, it appears that no investigations or prosecutions have been carried out by the Jammu and Kashmir Police. Finally, the state of impunity is clear as the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 173

Victim Details

Abdul Qayoom Lone [Extra-Judicial Killing]
Age: 32
Occupation: Driver, Health Department
Son of: Abdul Samad Lone [deceased]
Spouse: Saleema Begum
Resident of: Watlab, Sopore, Baramulla district

Alleged Perpetrators

1. Constable Anil Ramachari, 179th Battalion, Central Reserve Police Force [CRPF], Camp Chinkipora

Case Information

The family of Abdul Qayoom Lone states that on 25 August 2007 at about 6:00 pm the victim was returning home with his friend Mohammad Ayoub Khan on a motorbike. Mohammad Ayoub Khan was riding the motorbike, with the victim sitting behind. Their motorbike almost had an accident with a CRPF vehicle at Lalbab Sahib, Chinkipora, Sopore. There was an exchange of words and a Sepoy with the

¹⁶¹ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

¹⁶² Information on the petition number was sought through RTI on 16 February 2012. Information was provided.

CRPF, Satpal Singh, slapped the boys. Subsequently, they were allowed to proceed, but were stopped and checked by the CRPF on two further occasions on the same road. Following the third occasion of interacting with the CRPF, Constable Anil Ramachari of the CRPF fired at the victim and his friend as they rode away on their motorbike. The victim died as a result of the shooting. While there were eye-witnesses to the event, the eye-witnesses did not identify Constable Anil Ramachari during the identification parade before the police. The family believes this was due to fear of reprisals against them.

The family of Abdul Qayoom Lone also states that persons from the CRPF had offered the family money to compromise on the case, which they refused to do.

First Information Report [FIR] no. 275/2007 was filed at the Sopore Police Station u/s 302 [Murder], 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] on 25 August 2007¹⁶³.

The family of Abdul Qayoom Lone states that during the identification parade before the Executive Magistrate [Tehsildar, Sopore] the eye-witnesses identified Sepoy Satpal Singh but not Constable Anil Ramachari. The family of the victim states that this was due to the witnesses being afraid and being harassed. Further, statements were made by the eye-witnesses before the District and Sessions Judge, Baramulla.

The family of Abdul Qayoom Lone filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 918/2007], seeking that the investigations in the case be completed and that the Union of India, the 179th Battalion of the CRPF and Constable Anil Ramachari cooperate with the investigative agency.

While the Government of Jammu and Kashmir and Jammu and Kashmir Police confirmed that the incident had taken place, they submitted before the High Court that investigations were ongoing and that the 179th Battalion CRPF was not cooperating. Letters from the Station House Officer [SHO], Sopore Police Station to the Additional Superintendent of Police [ASP], Sopore, confirm that there was indiscriminate firing on the victim.

The Union of India, 179th Battalion CRPF and Constable Anil Ramachari denied the entire incident. On 29 September 2009, the High Court ordered that cooperation be provided to the investigative agency and that the investigation be completed within three months.

On continued non-conclusion of the investigation, the family filed a contempt petition [no.153/2010] before the High Court. The Government of Jammu and Kashmir and the Jammu and Kashmir Police

continued to claim that they had not received cooperation from the Union of India. Further, they confirmed that while the witnesses had identified “HC/GD Satpal” during an identification parade, others [that included “Ct/GD Anil Ramachari”] were not identified. Further, that the 179th Battalion CRPF in their Court of Inquiry had found none of their personnel guilty. On 27 September 2011, the High Court ordered that cooperation be provided, and that investigation be concluded in six weeks. This petition remains pending.

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 16 February 2012. Information was provided.

The State Human Rights Commission [SHRC], after being approached by the family, issued its final decision on 1 April 2010 and recommended ex-gratia government relief of Rs. 1,00,000 and other benefits due to the victim by virtue of his employment with the Health Department. The family has received the Rs. 1,00,000.

The family of Abdul Qayoom Lone gave a statement to the IPTK on 19 December 2011.

The instant case provides an interesting example of the challenges that families of victims face in Jammu and Kashmir.

On one hand the incident itself appears to have been witnessed by other persons. But, if the family of the victim is to be believed, the witnesses, due to fear, have not identified Constable Anil Ramachari.

On the other hand, the investigations in the case continue to drag on despite High Court rulings setting deadlines for investigations, and ordering cooperation. The role of the Union of India and the 179th Battalion of the CRPF in this case has been criticized by the Government of Jammu and Kashmir, and acknowledged by the High Court. But, what is perhaps most curious in this case is the role of the police investigating the case. This would become apparent on considering the SHRC decision of 1 April 2010.

The SHRC begins by considering the reports filed before it by the Director General of Police [DGP], Jammu and Kashmir, the SHO of Sopore Police Station and the Deputy Commissioner, Baramulla.

The SHRC states that during investigation the basic facts of the case – the death of the victim due to the indiscriminate firing of the CRPF – have been made out. The SHRC then states that “Constable Anil Ramachari...is identified by the eye witnesses as accused who fired upon Abdul Qayoom Lone”.

¹⁶³ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. By communication dated 9 January 2014 from the Jammu and Kashmir Police a copy of the FIR was provided and that the case was “under investigation”.

The SHRC then states, based on the SHO, Sopore Police Station report that the victim was not involved in any subversive activities. This matter of the eye-witnesses naming Anil Ramachari as the person who fired at the victim is confirmed by the DGP, Jammu and Kashmir letter to the SHRC on 2 September 2008 and a letter from the SHO of the Sopore Police Station to the Commanding Officer of the CRPF, 179th Battalion, Sopore of 30 August 2007.

Further, the family of the victim received a copy of a document – which also states that Constable Anil Ramachari is the person identified to have killed the victim in the presence of Satpal Singh – from the SHO of Sopore Police Station. This is an unsigned document.

Finally, and relevant to the issue, the family of the victim sought protection for the eye-witnesses in the case from the High Court during the proceedings [under Criminal Miscellaneous Petition (CMP) no.: 986/2008]. The contention was that these witnesses were being harassed.

The High Court on 4 June 2008 asked the SSP, Baramulla to consider the matter and take necessary action.

Therefore, the police accept that the witnesses have named Anil Ramachari.

It is on record that the witnesses appear to have been harassed. Satpal Singh has been specifically identified during the identification parade.

Therefore, the only lacunae in this case, that Anil Ramachari was not positively identified during the parade, would appear to in fact be a case of witnesses, intimidated and harassed, unable to take the final and crucial step of pointing out the alleged perpetrator.

Under these circumstances, it would appear that the system seems unable to deal with this issue and unfortunately, the only outcome might well be a closure report in this case.

The positive identification of Satpal Singh, and that the bullet that was fired and killed the victim was provided to the police [according to the family], should ordinarily have assisted the police in implicating the alleged perpetrator.

The CRPF Court of Inquiry lacks transparency and it is unclear whether in the Court of Inquiry, or during police investigations, Satpal Singh, having been identified, was ever questioned.

If Satpal Singh has suppressed facts in this case, he could also be considered as a co-accused in the case for his role in the killing and subsequent cover up.

The post crime support to the alleged perpetrator and the non-cooperation of the CRPF with the investigations suggests an endorsement of the crime by the CRPF.

The IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the CRPF between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Further, the IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir but no information was provided.

Therefore, this case might well serve as another example of one where the systems of justice are unwilling to deal with the realities of justice in Jammu and Kashmir.

Case No. 174

Victim Details

Farooq Ahmad Rather [Extra-Judicial Killing]

Age: 30

Occupation: Shawl seller/appearing for 12th Standard exams

Son of: Abdul Rehman Rather

Resident of: Mazhamma, Beerwah, Budgam District

Alleged Perpetrators

1. Constable Jarnail Singh, Special Operations Group [SOG], Magam, Jammu and Kashmir Police

Case Information

On 25 June 2008 there was a peaceful protest on the Amarnath shrine land issue about 100 yards from the residence of Farooq Ahmad Rather. A road in the area had been blocked with stones. A police party arrived, removed the stones and then started firing indiscriminately. They entered the houses in the area and beat the residents. During this indiscriminate firing, a bullet hit the victim while he was sleeping inside his residence. The family of the victim and others immediately attempted to rush the victim to the hospital. They were initially stopped by the police who wanted to take the body from them. This was resisted and the victim was taken to the hospital. The victim succumbed to his injuries. The protest was completely peaceful and there was no stone pelting taking place.

The Senior Superintendent of Police [SSP], Budgam, Ashiq Bukhari, told the family not to agitate the issue and that in return employment would be provided. But, subsequently, SSP Ashiq Bukhari was transferred. The family of the victim blames Constable Jarnail Singh for the death of the victim.

The family of Farooq Ahmad Rather gave a statement to the IPTK on 14 March 2012.

First Information Report [FIR] no. 80/2008 u/s 149 [Liability for other members of unlawful assembly], 341 [Wrongfully restraining person], 307 [Attempt to murder], 386 [Extortion through fear of death/grievous hurt], 392 [Robbery], 511 [Attempting to commit offence punishable with life imprisonment and in the process doing act towards the commission of offence] Ranbir Penal Code, 1989 [RPC], was filed at the Magam Police Station¹⁶⁴. Further information sought through RTI dated 14 November 2014.

The family of the victim approached the State Human Rights Commission [SHRC] in 2011 and the matter is still pending [the family of the victim filed a rejoinder before the SHRC on 19 March 2012]. To date, they have received Rs.1,00,000 ex-gratia government relief, but no compassionate employment under SRO-43 [Statutory Rules and Orders]. A letter dated 17 August 2008 from the Magam Police Station to the SSP Budgam confirms that there was nothing adverse against the victim in the police records. The final decision was given by the SHRC on 13 June 2012.

In addition to the final decision of the SHRC, a series of letters and other documents may be considered.

To begin with, the letter dated 17 August 2008 from the Magam Police Station clearly establishes the innocence of the victim. The application made by the family of the victim before the SHRC, in contrast to the statement given to the IPTK, accepts that there were violent protests in Mazahama village on 25 June 2008. Assuming this to be the position of the family, the remainder of the documents will now be analyzed.

On 13 February 2009 the Superintendent of Police [SP], Budgam, writing to the Deputy Commissioner, Budgam, refers to Constable Jarnail Singh firing some bullets "in air in haste" which resulted in the death of the victim. But, on 22 October 2011, in a letter written by the Director General of Police [DGP], Jammu and Kashmir, Srinagar, to the SHRC, there is no longer any reference to Constable Jarnail Singh although the remainder of the facts remain the same. Consequently, the letter now states that the investigation was concluded and the case was closed by declaring the perpetrators as untraced on 20 February 2011. Therefore, it appears to be a situation of the Constable Jarnail Singh being shielded as within a period of two years he no longer finds mention in the record of the police.

The Deputy Secretary, General Administration Department [GAD], Government of Jammu and Kashmir, dated 28 October 2009, to the Deputy

Commissioner, Budgam, that states that "SRO-43 covers only the civilians who die as a result of militancy related action and not in civil commotion", thereby denying any SRO-43 benefits to the family of the innocent victim. The Assistant Commissioner [Revenue], Budgam, by letter dated 16 December 2009, to the SHRC, referred to the position of the GAD and forwarded the 28 October 2009 letter. The family of the victim argued against the position taken by the GAD when filing its submissions before the SHRC. It was argued that this was an inconsistent position taken by the Government of Jammu and Kashmir as there have been numerous instances of SRO-43 benefits being provided in cases such as the instant one [some of these cases may be found in this very report]. Further, granting of SRO-43 benefits only in militancy related cases is discriminatory as there exists no discernible reason that a person killed in a "civil commotion" or at the hands of the armed forces should not be entitled to compensation.

The SHRC final decision begins by referring to the documents on record. In addition to some of the documents referred to above, reference is also made to a letter from the Sub-District Police Officer [SDPO], Budgam to the SP, Budgam which confirms the direct involvement of the alleged perpetrator in the killing of the victim. The SHRC first confirmed the death of the innocent victim by the alleged perpetrator. But, the SHRC considered this to be an "accidental death" and not a cold blooded murder. But, continuing, the SHRC stated that standard operating procedures had not been followed and that the alleged perpetrator must be punished.

Further, the SHRC, commenting on the closure of the case, stated that "the investigating officer cannot hush-up the matter in such a slipshod manner". The SHRC recommended the reopening of the case for further investigations by an officer not below the rank of a Deputy Superintendent of Police [DSP].

Further, the SHRC stated on the issue of compassionate employment that there can be no discrimination and that the family of the victim must also be provided compassionate employment.

The family has filed a petition in the High Court for implementation of the SHRC decision.

This case serves as a strong example of the widely adopted practice in such circumstances when rules on how and when to control a crowd are violated.

Within the context of Jammu and Kashmir, and the past violations in similar circumstances, it is vital that perpetrators of such crimes must not be allowed to be protected under the guise of accidentally causing the deaths of innocent victims.

¹⁶⁴ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013.

Case No. 175Victim Details

1. Mansoor Ali Kumar [Extra-Judicial Killing]
Age: 17
Occupation: 10th standard student
Son of: Ali Mohammad Kumar
Resident of: Khanpora, Baramulla District
2. Danish Gojri [Injuries]
Age: 11/12
Occupation: 4th standard student
Son of: Abdul Rehman Gojri
Resident of: Khanpora, Baramulla District

Alleged Perpetrators

1. Personal Security Officers [PSO's] of Jammu and Kashmir Police accompanying Mushtaq Ahmad Mir, Member, Congress party

Case Information

On 7 November 2008 at about 11:15 am, Mansoor Ali Kumar and others playing cricket at the Government Middle School for Girls, Khanpora were asked to leave the premises. As Mansoor Ali Kumar was walking outside the school premises, he was shot dead. The family of Mansoor Ali Kumar believes that the victim was shot at by the PSO's accompanying the election campaign rally of the contesting Congress candidate Mushtaq Ahmad Mir. Another boy, Danish Gojri was injured in this firing. The family of Mansoor Ali Kumar states that the area was peaceful and there was no stone pelting taking place.

On the same day of the incident, the family states that, Mushtaq Ahmad Mir appeared on the local news channel and denied any role in the incident. Five to six days later, the family states that Mushtaq Ahmad Mir sent a mediator to the family and asked them to forget about the incident and that two jobs would be provided to the family. But, no jobs were subsequently given. A year later, the same mediator asked the father of Mansoor Ali Kumar to accompany him and meet Mushtaq Ahmad Mir. The father of Mansoor Ali Kumar refused.

The family of Mansoor Ali Kumar gave a statement to the IPTK on 29 December 2011.

First Information Report [FIR] no.206/2008 u/s 332 [Causing hurt to deter public servant from duty], 336 [Act endangering human life/personal safety], 341 [Wrongfully restraining person], 427 [Mischievous causing damage of Rs.50 and upwards] Ranbir Penal Code, 1989 [RPC] was filed at the Bandipora Police Station.¹⁶⁵ The family also filed a written report but it was not added to the FIR. The

communication of 9 May 2012 by the Jammu and Kashmir Police stated that the case was presently sub-judice. By communication dated 9 July 2012 information was provided that the case had been chargesheeted. Further, a copy of the FIR was provided and documents were received that suggest that three persons were chargesheeted in this case.

The family received Rs.1,00,000 ex-gratia government relief from the Deputy Commissioner, Baramulla.

The State Human Rights Commission [SHRC] took suo moto cognizance of the case and recommended compassionate employment under SRO-43 [Statutory Rules and Orders] to the family, as ex-gratia government relief had already been received by Mansoor Ali Kumar. The final decision of the SHRC was on 3 May 2011. A report of the Director General of Police [DGP], Jammu and Kashmir before the SHRC states that the firing was a result of stone pelting caused by a violent mob. But, the SHRC considered the 18 December 2008 report of the Additional District Development Commissioner, Baramulla and found that the firing was unprovoked by unidentified armed forces. It is also of interest to note that on a separate complaint filed on 19 May 2009, a final decision was given by the SHRC on 19 November 2009. In this complaint the SHRC received a report from the Deputy Commissioner [DC], Baramulla dated 2 September 2009 which stated that SRO-43 benefits would not be accrued by the dependents of the victim based on the income level of the family, the fact that dependency on the victim was not proved, and that it was a "non-subversion/civil commotion case". The matter was thereby disposed off.

The family of Mansoor Ali Kumar state that they have yet to receive compassionate employment.

The 18 December 2008 report of the Additional District Development Commissioner, Baramulla, after interviewing witnesses and Mushtaq Ahmad Mir, found that the firing was unprovoked. But, it failed to specifically implicate the PSO's escorting Mushtaq Ahmad Mir. Mushtaq Ahmad Mir confirmed that he was travelling in a gypsy vehicle. Further, two witnesses confirmed that the firing had been from the personnel travelling in the gypsy vehicle. But, the enquiry chose to implicate "security forces (in khaki)" without confirming that they were travelling in the gypsy vehicle. But, crucially, the enquiry also stated that "the cloud of doubt against Mushtaq Ahmad Mir and his security personnel could not be cleared in this enquiry..."

The decision of the SHRC on 19 November 2009 denying SRO-43 benefits based on the DC,

¹⁶⁵ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. A copy of the FIR was provided by the Jammu and Kashmir Police by communication dated 9 May 2012. Further information sought through RTI on 15 October 2013. By communication dated 20 November 2013 from the Jammu and Kashmir Police a copy of the FIR and final report was provided. It was stated that the case had been chargesheeted.

Baramulla submission that non-subversion/civil commotion cases could not be granted compassionate employment is erroneous. Both the SHRC and the DC, Baramulla have ignored the fact that a crime of extra-judicial killing was perpetrated. Extra-judicial killings under International law or the local laws are clearly a despicable human rights abuse and the classification of these extra-judicial killings into civil commotion or militancy related incidents does not change the nature of the crime perpetrated. Also this classification of extra-judicial killings into militancy related and non-militancy related amounts to be discriminatory, which is in violation of Article 14 of Indian Constitution and also the Jammu and Kashmir Constitution.

Despite the enquiry report of the Additional District Development Commissioner, Baramulla confirming that an extra-judicial killing took place, no FIR on the killing of Mansoor Ali Kumar was filed. Further, the Jammu and Kashmir Police continued to falsely represent the facts of the case before the SHRC. The conduct of the Government of Jammu and Kashmir in this case helps in understanding the practice of appointing enquiries after human rights abuses and the non-implementation of the enquiry reports.

Case No. 176

Victim Details

1. Muzaffar Mushtaq Ganaie [Extra-Judicial Killing]
Age: 18
Occupation: 1st year college student
Son of: Mushtaq Ahmad Ganaie
Resident of: Koil, Pulwama District
2. Muhammad Ayub Kumar [Extra-Judicial Killing]
Son of: Ghulam Muhammad Kumar
Resident of: Koil, Pulwama District
3. Zeeshan Ali Bhat [Extra-Judicial Killing]
Son of: Ali Muhammad Bhat
Resident of: Koil, Pulwama District

Alleged Perpetrators

1. Deputy Commandant, 78th Battalion Central Reserve Police Force [CRPF]
2. Deputy Commandant's Personal Security Officers [PSO], 78th Battalion Central Reserve Police Force [CRPF]

Case Information

On 13 December 2008 a procession against the then ongoing Jammu and Kashmir State Legislative Assembly elections was taking place in the area. Muzaffar Mushtaq Ganaie, a student preparing for his

exams, was not a part of the protest. A group of CRPF personnel came to the village and without any provocation fired upon the crowd. Muzaffar Mushtaq Ganaie, standing on the side, was targeted and was critically injured and rushed to the Pulwama hospital and then to the Shri Maharaja Hari Singh Hospital [SMHS], Srinagar. On the way to Srinagar, the ambulance carrying the victim was stopped by the CRPF at Kakpora for about one hour. The victim succumbed to his injuries on the way to the hospital. Muhammad Ayub Kumar and Zeeshan Ali Bhat were injured in the firing as well.

A First Information Report [FIR] was filed at the Pulwama Police Station. The Government of Jammu and Kashmir ordered an enquiry with Khursheed Ahmad Ganai appointed as the enquiry officer. The family of Muzaffar Mushtaq Ganaie testified before the enquiry. According to media sources, on 21 February 2009, Deputy Commandant of the 78th Battalion CRPF and his PSO's were found guilty of "misconduct" for visiting the area without informing the police¹⁶⁶.

It is unclear why the information regarding the enquiry report shared with the media did not carry the names of the perpetrators of the crime. Further, the finding of "misconduct" for a crime of murder is clearly misplaced.

Information was sought on 12 January 2012 through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on all the enquiries ordered by the Government of Jammu and Kashmir from 1990 to 2011 in Jammu and Kashmir. No information on this case was provided. In the instant case the lack of transparency and accountability is a worrying factor for the deliverance of justice. Further, it needs to be examined whether the enquiry report resulted into investigations and prosecutions.

The family of Muzaffar Mushtaq Ganaie was offered Rs.1,00,000 ex-gratia government relief but they refused.

The family of Muzaffar Mushtaq Ganaie gave a statement to the IPTK on 16 February 2012.

Further, the IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the CRPF between 1990 and 2011 in Jammu and Kashmir. No information was provided.

The IPTK also sought information on 10 January 2012 on all cases of sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

166 Greater Kashmir, <http://www.greaterkashmir.com/news/2009/Feb/22/crpf-officer-psos-indicted-for-koil-killing-40.asp>, 21 February 2009.

Case No. 177Victim Details

Fayaz Ahmad Mir [Extra-judicial Killing]
 Age: 30
 Occupation: Tailor
 Son of: Abdul Rasheed Mir
 Resident of: Zab-Khurhama, Lolab, Kupwara district

Alleged Perpetrators

1. Naresh Sood, Commanding Officer [CO / Colonel], 18 Rashtriya Rifles [RR], Kooligam Camp, Kupwara

Case Information

On 1 February 2009, at about 6:45 pm, Fayaz returned from his shop at Khurhama accompanied by his cousin, Zakir Mir. As soon as they reached home, Fayaz told Zakir to carry the bags inside while he urinated outside. At the time, Fayaz was living with his family in an old house on the periphery of the forest. There was no compound around the house; an open field surrounded it.

As Fayaz sat down to urinate, there was a loud call from army personnel nearby telling Fayaz to put his hands up. He replied to the army personnel saying that he was "Fayaz Tailor", but still they forced him to raise his hands. As soon as he put his hands up, the group of army men fired at him.

The family of the victim heard about 5-6 gun shots followed by sounds of Fayaz screaming, upon which they rushed outside. They found the victim on the ground in a pool of blood and also saw six army personnel in uniform. The family was able to see the army personnel, as there was still some natural light.

Abdul Rasheed Mir [father of the victim]; his two sons – Naseer and Ghulam Rasool; his wife Saja; and daughters-in-law Parveena and Dilshada, all saw the army personnel, and except for Saja, all of them chased after the army men. Saja remained with her son – Fayaz, the victim. During the chase, the victim's brothers threw stones at the army personnel, to which the army men retaliated by firing in the air. The family chased the army personnel for about one hundred meters.

At this point, the family ran back towards Fayaz and carried him to the main road. On reaching the main road, they saw a huge deployment of the army. The family managed to get hold of a sumo vehicle and put the victim into it. However, the army stopped and questioned them about the shooting for fifteen minutes before they could put Fayaz onto the vehicle. *Enroute* to Kupwara hospital, the victim spoke to his brother and his father. The victim told them that the army personnel shouted at him to raise his hands to which he replied that he was "Fayaz Tailor". Fayaz told

his father and brother that he believed the army personnel intentionally shot him after they heard his name. At Kupwara hospital, the victim was referred to Sheri Kashmir Institute of Medical Science [SKIMS], Soura, Srinagar.

En route to Srinagar, the victim succumbed to his injuries at Pattan, Singhpora. He had been shot on the right side of his abdomen, in the groin area. He had also received bullets on both elbows, which were badly damaged. On arriving at SKIMS, Soura, he was declared dead. The family headed back to Kupwara the same night where they stayed for a short while. The next morning they carried the victim's dead body back home. The family performed the last rites of the victim at about 12:30 pm. The autopsy on the body of the victim was conducted at SKIMS, Soura.

In the morning, Senior Superintendent of Police [SSP], Kupwara Uttam Chand; Deputy Superintendent of Police [DSP], Kupwara Ashraf Mir; Member Legislative Assembly [MLA] Kaisar Lone; and Additional Deputy Commissioner [Addl. DC] Kupwara reached the house. They assured the family that they would investigate the case. The Jammu and Kashmir Police filed a First Information Report [FIR] against the 18 RR camped at Kooligam. During investigation, the police recovered 5-6 shells from the spot on the day that Fayaz's body was brought back numbered 4 round, 99/324, 2 round, 97/322, 8 round, 98/323.

The police remained in the house of the victim for continuously over four days. On the fifth day, a team of army officers accompanied by the investigating officer, Bashir Ahmad, also the Assistant Sub-Inspector [ASI] Police, Kooligam arrived. The army officers said they had come to investigate the matter. They also told the family to come to the Kooligam camp the next day.

The next day, the family went to the Kooligam camp where the officers asked them about the incident. After that, the officers brought six army men who they said were involved in the firing. Then, the Brigade Commander took a statement of Zakir Ahmad Mir, son of Abdullah Mir and the statements of Naseer Ahmad Mir, brother of victim, and the statement of the victim's father in the presence of the investigating officer. The statements were taken in front of all these six army men. Before the statements were taken, the investigating officer told the family that the CO wanted to see them. Naresh Sood, the CO of the 18RR, Kooligam Camp, requested the father of the victim to forgive him. The CO said that his men had committed a blunder and he sought mercy for them. The victim's father retorted and asked the CO why had his men not taken mercy on the victim, upon which the CO fell silent. The father of the victim saw the name of the CO on his nameplate that day. After the statements were taken, the Brigade Commander told the family that his men had committed wrong. When the Brigade Commander visited the victim's house, he told the

family that he had detained all six army men responsible for the firing. He even displayed a key and said that it was the key of the lock up.

After about one week, the family was called to the police headquarters, Kupwara, to the office of the DSP. The DSP recorded statements of the father of the victim and Naseer, Ghulam Rasool, brothers of the victim as well as Abdul Gani Mir, the Numberdar.

One year after the incident, the CO was possibly transferred from the Kooligam Camp.

On one occasion, the investigating officer asked the family to reconcile with the army. The victim's brother, Ghulam Rasool, went to meet the investigating officer at his house. After meeting the investigating officer, the brother was coming out of the house and saw army personnel giving the investigating officer two barrels of kerosene. The family, on seeing this, complained to the DSP about the investigating officer's conduct and of his taking bribes from the army. The DSP rebuked them by saying that he should be allowed to take such a bribe.

On another occasion, the father of the victim asked the DSP about the status of the case. He replied that he was communicating with the CO of the 18RR but there was no reply from the army.

In April 2009, the brother of the victim went to the State Human Rights Commission [SHRC] and filed a complaint, which is perhaps still pending.

The 18RR Kooligam camp continues to be in the same place.

A relief case was also processed in the office of the Deputy Commissioner, Kupwara. The wife of the victim was given Rs. 1 lakh as ex-gratia relief and an additional Rs. 4 lakhs in lieu of compassionate employment under Statutory Rules and Orders 43 [SRO 43].

The wife of the victim, after taking the money, remarried a person named Bilal Ahmad Khan, son of Rashid Khan, resident of Kalaroos Padipora, Kupwara. Bilal was working as a coolie with the army when Tahira remarried him. She remarried without informing the victim's family. She left the house only a few days after she got the ex-gratia relief amount saying she wanted to visit her father. But, she never returned and a few months later the victim's family came to know what had happened.

The father of the victim, Abdul Rashid Mir, gave the above statement to the IPTK on 14 December 2013.

Police has registered a First Information Report [FIR] no. 3/2009 under sections 302 [Murder] of the Ranbir Penal Code [RPC] at the Police Station at Lalpora. Further information was sought on this FIR through Right to Information Act [RTI] through an application

dated 14 November 2014.

It is to be noted that the statement of the father of the victim, an eyewitness to the extra-judicial killing forms the basis for this case. Though this statement is detailed and without contradictions, it is essential for the statements of all the witnesses to the events leading to the custodial killing to be recorded. These have not been obtained so far but are valuable evidence against the person responsible for directly perpetrating the crime on the victim. According to the statement, before the victim died, the victim told his father and brother that he believed the army personnel intentionally shot him even though he identified himself to them as 'Fayaz Tailor'. The victim died shortly after, in Pattan, Singhpora *enroute* to SKIMS, Soura. Under the law, such a statement would constitute a dying declaration and, if corroborated by other evidence, may be used to sustain a conviction.

While the names of the accused in this case are unknown, under international criminal law principles of command responsibility it is clear that Commanding Officer Naresh Sood would be indicted for failing to take action following receiving information of a crime having been committed by persons under their effective control.

There is no status of the investigations of this case by the Jammu and Kashmir police. Based on the actions of the investigating officer and the DSP in this case it appears that the police has probably closed this case. The Ministry of Defence seems to have cared very little about the Jammu and Kashmir Police investigations or in instituting a process for delivering justice. The available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 178

Victim Details

1. Mohammad Amin Tantray [Extra-Judicial Killing]
Son of: Mohammad Shaban
Resident of: Bomai, Sopore, Bararmulla District
2. Javid Ahmad Dar [Extra-Judicial Killing]
Age: 24
Son of: Mohammad Ismail Dar
Resident of: Muslim Peer, Sopore, Bararmulla District
3. Nazir Ahmad Khwaja [Injury]
Son of: Abdul Ghaffar
Resident of: Bomai, Sopore, Bararmulla District

Alleged Perpetrators

1. Sepoy Kamilesh, 22 Rashtriya Rifles [RR], Army, Camp Bomai [referred to as Rajinder Post camp]
2. Sepoy Amar Singh, 22 Rashtriya Rifles [RR],

- Army, Camp Bomai [referred to as Rajinder post camp]
3. Sepoy Pritam, 22 Rashtriya Rifles [RR], Army, Camp Bomai [referred to as Rajinder post camp]
 4. Sepoy Harvinder Singh, 22 Rashtriya Rifles [RR], Army, Camp Bomai [referred to as Rajinder post camp]

Case Information

On 21 February 2009 at 5:45 pm, Mohammad Amin Tantray and Javaid Ahmad Dar were killed in army firing at Bomai, Sopore. The incident occurred when an army convoy of 22 RR was passing through the area near Bomai. Nazir Ahmad Khwaja was injured in the firing but survived.

The family of Mohammad Amin Tantray states that on 21 February 2009, Mohammad Amin Tantray and Nazir Ahmad Khwaja went to the market for a walk.

Meanwhile, an army vehicle of the 22 RR camped at Bomai came and opened indiscriminate fire. One bullet hit the throat of Mohammad Amin Tantray and the other bullet hit Nazir Ahmad Khwaja on the arm and near his chest. There was no justification for the firing.

The family of Mohammad Amin Tantray has been greatly affected by the incident. Further, to obtain information regarding the proceedings in the matter they have had to run from office to office with no result.

The family of Javaid Ahmad Dar states that on 21 February 2009 Javaid Ahmad Dar had gone to the shrine in Tujjar Sharief, Sopore. On his way back, at Bomai the personnel of the 22 RR fired on pedestrians without any provocation. Javaid Ahmad Dar was not taken to the hospital immediately due to which he lost a lot of blood and subsequently died. The personnel responsible for the killing had come from the post referred to as the "Rajinder Post".

The family of Mohammad Amin Tantray gave a statement to the IPTK on 24 December 2011. The family of Javaid Ahmad Dar gave an undated, unsigned statement to the IPTK.

First Information Report [FIR] no.73/2009 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at the Sopore Police Station on 21 February 2009.¹⁶⁷

The State Human Rights Commission [SHRC] after taking suo-moto cognizance of the case found on 4 January 2010 that the victims were innocent, relief and benefits where eligibility was satisfied had been provided, and recommended that the investigation be brought to its logical conclusion.

The family of Javaid Ahmad Dar received Rs.1,00,000 ex-gratia government relief and compassionate employment under SRO-43 [Statutory Rules and Orders].

The Government of Jammu and Kashmir ordered an enquiry by the Deputy Commissioner [DC], Baramulla, Baseer Ahmed Khan. This was completed but the report does not appear to have been made public. The report allegedly indicts the army for the killing of Mohammad Amin Tantray and Javaid Ahmad Dar.¹⁶⁸ It has also been reported that an army Court of Inquiry indicted two soldiers and a Junior Commissioned Officer [JCO]¹⁶⁹.

The Ministry of Defence, in response to a RTI on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 10 January 2012 in relation to this case that it was under examination. The names of the alleged perpetrators were referred to as well. But, in the most recent communication, of 9 January 2014, from the Jammu and Kashmir Police, it is stated that "Govt sanction declined / UI" – presumably that government sanction was declined, but the case remains under investigation. In response to a RTI on Home Department empowered committee on SHRC recommendations, the Home Department by communication dated 24 March 2014 provided information on other cases, including the instant one. It was taken up in the 12th meeting on 24 June 2010. Here the Home department states that the investigation of the case is completed and sanction for prosecution would be sought shortly.

Despite a Court of Inquiry reportedly finding against the army personnel, the available documents do not suggest that a Court-Martial was conducted in this case by the army, and it appears that sanction has been declined, but the police continue to hold investigations.

167 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Information on the status of the case and enquiry conducted was sought through RTI on 26 April 2012. No information was provided. Further information sought through RTI on 15 October 2013. By communication dated 9 January 2014 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI dated 14 November 2014.

168 Greater Kashmir, <http://www.greaterkashmir.com/news/2012/Feb/13/probes-fail-to-nail-culprits-45.asp>, 13 February 2012. Information on the report was sought through RTI on 27 April 2012. No information was provided.

169 Kashmir Observer, http://www.kashmirobsrver.net/index.php?view=article&catid=15%3Aatop-news&id=1127%3AArmy-holds-3-soldiers-guilty-of-lapses&tmpl=component&print=1&layout=default&page=&option=com_content.

employment and relief and not pursue the case. Further, the villagers who gave statements were asked to change their statements and blame “people in pherans” for the killings. At the police station, where the DSP instructed them on the change of their statements, there were also certain CRPF personnel present.

The family of the victim gave a statement to the IPTK on 21 June 2014.

The official position of the CRPF was that a CRPF patrol had gone to the village on specific information about the presence of militants. The patrol was fired upon by militants and they returned the fire.¹⁷⁰

The Government of Jammu and Kashmir ordered an inquiry into the killing of Ghulam Mohi-ud-Din Malik which was completed¹⁷¹. It was reported that a Court of Inquiry was constituted into the killing by the CRPF¹⁷².

The alleged perpetrators listed above are reported to have been responsible for the killing¹⁷³. FIR no. 22/2009 u/s 302 [Murder], 452 [House trespass after preparation for hurt/assault/wrongful restraint] Ranbir Penal Code, 1989 [RPC] was filed at Rajpora Police Station on 18 March 2009.¹⁷⁴

The 25 July 2012 communication from the Jammu and Kashmir Police states that the investigation of the case is complete but pending as the CRPF personnel were yet to be arrested.

It is noteworthy that despite the passage of five years, the prosecution of the alleged perpetrators has stalled as they are yet to be arrested. The Jammu and Kashmir Police appears to have failed to use the coercive powers at its disposal to effect the arrest and ensure that the perpetrators of the crime are brought before the court.

Further, the IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir. No information was provided.

The IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

Case No. 180

Victim Details

Manzoor Ahmad Beigh [Extra-Judicial Killing]
Age: 40
Occupation: Car broker
Son of: Abdul Ahad Beigh [deceased]
Resident of: Begh Mohalla, Aluchi Bagh, Srinagar

Alleged Perpetrators

1. Inspector Khursheed Ahmed Wani, Special Operations Group [SOG], Jammu and Kashmir Police, Camp Cargo, Shergari
2. Hilal Ahmad alias Sahaba, Civilian

Case Information

On 18 May 2009, Manzoor Ahmad Beigh was abducted from his shop in Khanyar. The brother of the victim was informed at around 1:30 pm, by two friends of the victim that Manzoor Ahmad Beigh had been receiving numerous calls from Inspector Khursheed Ahmed Wani to visit the SOG Cargo Camp, Shergari.

On the day of his killing, the victim, and his two friends went to the camp. While the victim entered the camp, his friends were made to wait outside for more than three hours. They saw a Santro car, with the victim in it, leaving the camp. The victim was taken to the Ramzaan Hospital, where based on the poor condition of the victim he was not admitted, and then taken to the Shri Maaharaj Hari Singh [SMHS] hospital where he was declared dead on arrival. The family of the victim state that the body of the victim bore torture marks.

First Information Report [FIR] no. 32/2009 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] was filed at Police Station Karan Nagar¹⁷⁵. By communication dated 30 November 2013 from the Jammu and Kashmir Police a copy of the closure report was provided along with information that the case was closed as not admitted.

Following public protests, the District Magistrate, Srinagar ordered an inquiry into the killing. The Additional District Development Commissioner, Srinagar, was appointed as inquiry officer and submitted his report on 25 May 2009 and indicted Inspector Khursheed Ahmed Wani for unnecessarily calling the victim to his camp. But the final conclusion

170 The Tribune, <http://www.tribuneindia.com/2009/20090320/j&k.htm#1>, 20 March 2009.

171 Rising Kashmir, <http://www.risingkashmir.in/news/of-promises-probes-and-kashmir-puzzle-13658.aspx>, 5 August 2011.

172 Express India, <http://www.expressindia.com/latest-news/JK-govt-orders-magisterial-enquiry-into-recent-civilian-killing/436949/>, 20 March 2009.

173 Greater Kashmir, <http://www.greaterkashmir.com/news/2009/Mar/29/crpf-troopers-killed-khaigam-carpenter-46.asp>, 29 March 2009, Kashmir Awareness, <http://www.kashmirawareness.org/Article/View/789/200-days-abdullah-regime-lives-lost-one-every-8th-day>, 20 July 2009.

174 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. By communication dated 25 July 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

175 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. On 2 June 2012 a copy of the FIR was provided. Further information sought through RTI on 15 October 2013.

was left subject to the post-mortem report in the case.

A post-mortem report, dated 18 May 2009, was submitted by the Department of Forensic Medicine, Government Medical College, Srinagar. The report states that the victim was brought to the hospital by an auto driver, thereby contradicting the family of the victims' reference to a Santro car. The report stated that there were abrasions on the body of the victim. The report concluded by stating that death was caused due to a massive sub-dural haemorrhage **caused by blunt force**. Also on record is a letter from the Head of Department, Forensic Medicine, Government Medical College, Srinagar, to the Sub-District Police Officer [SDPO], Shaheed Gunj, Srinagar, dated 7 April 2011, which stated that "the fall which deceased had can cause sub dural haemorrhage or sub dural haemorrhage can cause fall". Further, that the "abrasion found where mechanical in nature. The possibility of acquiring abrasion while handling of the body cannot be ruled out".

The State Human Rights Commission [SHRC] took suo moto cognizance of the case on 22 May 2009 and issued its final decision on 5 January 2011. A letter from the Assistant Commissioner, Kashmir, dated 27 June 2009, to the SHRC states that Inspector Khursheed Ahmed Wani had been dismissed from his service by the Government.

The family of the victim approached the Chief Judicial Magistrate [CJM], Srinagar on 9 September 2009 to monitor the investigations of the police. On 26 April 2012, the Special Mobile Magistrate, PT&E Srinagar, took cognizance of the final report of 26 April 2012 submitted by Sub-Divisional Police Officer [SDPO], Shaheed Gunj, the Investigating Officer. The conclusion of the Investigating Officer was that a prima facie case was not made out against any person and the case had been closed. A status report on record of 13 February 2012 suggests that the witnesses, whose statements were recorded, did not testify to physical force being used.

Further, the witnesses do not state that the victim was at any point restrained/assaulted/confined. The Court stated that all the witnesses except one witness had deposed that the death took place in the cabin of Inspector Khursheed Ahmed Wani. The single witness had stated that the death took place in the lobby of the cabin. The Court noted that the victim had died "of his own due to sub-dular haemorrhage". There were no marks of violence on the head of the deceased as noted by two doctors who deposed under Section 164-A [Evidence of material witnesses to be recorded by Magistrate in certain cases] Criminal Procedure Code, 1989 (CrPC). The case was closed as not admitted/not proved. This decision has been challenged in the High Court of Jammu and Kashmir. Notices have been issued to the parties in the case.

In the instant case, the investigative process may be analysed in addition to the role of the alleged perpetrators.

On record is a 3 December 2011 order of the CJM, Srinagar, monitoring the investigations, which states the following:

- "I am compelled to note here 'Sorry State of things' as regards investigation of the case."
- "If this is to be the pace of investigation, then only God knows when investigation will be completed."
- "The conduct of the investigation cannot be left to sweet will of investigating agency."

Based on the above observations, the Court ordered the Senior Superintendent of Police [SSP], Srinagar to monitor the investigations on a daily basis, submit progress reports fortnightly, and for investigations to be completed within two months. Further, and of particular interest, is a letter dated 25 September 2009 from the Chief Prosecuting Officer, Srinagar to the SDPO, Shaheed Gunj, Srinagar. This letter states that a combined reading of the evidence collected during the investigations suggests that there was a money dispute involving the victim and Hilal Ahmad alias Sahaba. Further, the victim was called to the Cargo Complex by Inspector Khursheed Ahmed Wani.

During his time at the Cargo Complex the victim developed "some complications" and died. The letter continues, in very clear and strong language, to suggest that the investigations must not be concluded until a perpetrator is found as there is evidence to suggest that the death of the victim was not natural. Even if Inspector Khursheed Ahmed Wani is found not to be involved, the investigations must not be concluded. The letter states that "the clinching point which will change the course of investigation is 'the circumstances and the condition of the deceased at the time when he complained of giddiness'. No finding on this point has been returned that is whether he was hit on the head or he fell in a way which exerted force on his head or otherwise". Further, it was stated that till date prima facie evidence had come on record against Inspector Khursheed Ahmed Wani under Sections 166 [Public servant disobeying law, with intent to cause injury to any person] and 342 [Wrongfully confining person] Ranbir Penal Code, 1989 [RPC].

Therefore, this document clearly suggests that atleast on 25 September 2009, the guilt of Inspector Khursheed Ahmed Wani, albeit to a lesser extent, was considered to have been established, but that further investigations were being suggested. It is then unclear why in 2012 the case was considered closed by the investigating authorities, and endorsed by the lower judiciary.

With regard to the event itself, the post-mortem report,

despite the more nuanced wording of the 7 April 2011 letter referred to above, clearly suggests that the death of the victim was due to unnatural causes. The references to abrasions and death caused by a blunt force strongly point to this. Further, the SHRC decision of 5 January 2011 may also be considered. The SHRC decision refers to a report from the Director General of Police [DGP], Jammu and Kashmir of 3 September 2009. This report states that:

- The victim had business dealings with another car broker: Saiba resident of Nishat. The victim owed Saiba Rs. 40,000.
- On the morning of 18 May 2009, Inspector Khursheed Ahmed Wani called up the victim and asked him to report at the SOG Camp, Shergari.
- The victim was taken inside the camp, while his friends were made to wait outside.
- "After some time the deceased is believed to have lost his consciousness and was reportedly taken to Ramzaan Nursing Home, Gogjibagh wherefrom he was referred to SMHS Hospital Srinagar where he was pronounced brought dead."
- The victim was not involved in any subversive activity.

The SHRC's investigating wing also conducted investigations and submitted that "the torture of deceased in cargo camp at Srinagar is a stark reality and also the investigation conducted by SDPO Shaheed Gunj Srinagar seems to be biased". The report dated 2 December 2010 states that statements of the following close relatives of the victim were recorded: Mohammad Shafi Pampori, Abdul Qayoom Khan, Abdul Majid Beigh, Imtiyaz Ahmad Bhat and Mushtaq Ahmad Beigh. The witnesses stated that the victim was a car broker and owed Rs. 40,000 to another car broker named Hilal Ahmad Bhat, resident of Brain, Nishat. On 18 May 2009 the victim was asked by Inspector Khursheed Ahmed Wani to report at the SOG Camp, Cargo. The victim went there along with two friends: Mohammad Sultan Shagoo and Sameer Ahmad Bakshi. The victim was taken inside whereas the two friends waited outside. The victim remained inside the camp for more than two hours and as he was leaving the room of Inspector Khursheed Ahmed Wani the victim fell down and lost his consciousness. The witnesses also stated that there were multiple injuries on the body of the victim. The witnesses stated that Inspector Khursheed Ahmed Wani was a close relative of Hilal Ahmad Bhat. The investigating wing also recorded the statements of Dr. Ghulam Qadir Shah and Dr. Mammer. Both Doctors confirmed the injuries on the body of the victim. They also stated that the "death was caused due to a grievous injury on the head of the deceased". They confirmed that the death was caused by a blunt force. The Doctors also gave their opinion that the victim had been tortured.

Inspector Khursheed Ahmed Wani was also given an opportunity to produce evidence. Four witnesses were produced. The witnesses confirmed that the victim

owed Rs. 40,000 to Hilal Ahmad.

Further, that Hilal Ahmad "filed an application" before the alleged perpetrator no.1, who then called the victim and directed him to pay the amount. The victim, "while leaving SOG Camp Cargo", fell down and lost his consciousness.

The investigating wing did not find these version of events credible. It was observed that these version of events do not explain how the victim sustained injuries on his shoulders, head, chest, and "intraparenchymal haemorrhage" of his kidneys. It was therefore concluded that the victim had been brutally tortured in custody. Further, that Hilal Ahmad should not have approached Inspector Khursheed Ahmed Wani for assistance. It was concluded therefore that Inspector Khursheed Ahmed Wani was involved in the commission of the crime.

The SHRC, based on the above, concluded as follows: "There is no doubt that the investigation being conducted by SDPO Shaheed Gunj is a protracted with no intention to conclude the investigation, it will be in the interest of delivery of justice, if the investigation of the case is transferred to State Crime Branch for fair and transparent investigation, as the Inspector Khursheed Ahmad has exceeded his powers in summoning the deceased Manzoor Ahmad Beigh in Cargo camp at Srinagar in settling the matter of a civil nature."

The SHRC decision, similar to the Additional District Development Commissioner, Srinagar inquiry, appears to limit the culpability of Inspector Khursheed Ahmed Wani, despite the unequivocal conclusions of its investigating wing. Considering that it is established that the victim was called by Inspector Khursheed Ahmed Wani to the camp, was seen entering the camp, was declared dead on reaching the hospital, and appeared to have been killed by a "blunt force", the culpability of the alleged perpetrator no.1 should have been concluded to have been for murder.

Nonetheless, despite the apparent slow and faulty investigations being conducted by the police authorities, the available documents appear to strongly point to the guilt of Inspector Khursheed Ahmed Wani. In light of this, the 26 April 2012 decision of the Special Mobile Magistrate, PT&E Srinagar, based it would appear on statements by doctors, is highly questionable. It would appear that the "doctors" had provided contradictory statements during the police investigations under Section 164-A [Evidence of material witnesses to be recorded by Magistrate in certain cases] Criminal Procedure Code, 1989 (CrPC).

Finally, the Additional District Development Commissioner, Srinagar report of 25 May 2009 may also be considered. The conclusions were based on statements of witnesses, relevant portions of relevant witnesses are summarized below:

- Abdul Majid Beigh, brother of the victim, testified to receiving information on his brother on 18 May 2009 from a person named Mohammad Sultan. Further, he states that he saw his brother lying dead in the hospital. Further, that the two persons who had informed him about the incident and the driver of the auto were arrested.
- Mohammad Sultan, stated that on 18 May 2009, while he was with the victim, the victim received a phone call following which he turned pale. The victim told him that he owed Rs.40,000 to a person named Hilal Ahmad alias Sahaba who was now “teasing” him through SOG. Inspector Khursheed Ahmed Wani had called him and directed him to report to him within 10 minutes. The victim then went to the camp along with Sadiq Ahmad, the witness and Sameer Ahmad Bakshi. They went in an auto. The victim entered the camp and the others remained outside. Subsequently, the witness stated that he left the place and only Sameer Ahmad Bakshi remained there [no further mention is made of Sadiq Ahmad]. After one and half hours he called Sameer Ahmad Bakshi to find out what had happened. The victim had not yet been released. The witness called back again in 15 minutes. The situation remained the same. At about 1:30 pm the witness called once again and he was informed by Sameer Ahmad Bakshi that the victim had some heart trouble and was being taken to Ramzaan hospital. He subsequently saw the dead body of the victim at the SMHS hospital.
- Sameer Ahmad Bakshi, testified in a similar manner as Mohammad Sultan but provided some additional details. Sameer Ahmad Bakshi stated that he spoke to a STD shop owner Imtiyaz Ahmad Bhat and requested him to go into the SOG camp and intervene in the matter. He then left for his house. He returned and spoke with Imtiyaz Ahmad Bhat who informed him that Inspector Khursheed Ahmed Wani had fixed instalments of the borrowed amount but the victim had felt giddy and fell down and had been taken to the hospital.
- Imtiyaz Ahmad Bhat, stated that on 18 May 2009, Sameer Ahmad Bakshi did speak with him and requested him to intervene in the matter relating to the victim and Inspector Khursheed Ahmed Wani. At about 1:40 pm the witness entered the camp and met Inspector Khursheed Ahmed Wani. A discussion took place, with the victim present, the terms of compromise were established, and then the victim felt giddy and fell down.
- Zahoor Ahmad, a constable, stated that he was at the gate of the Cargo camp on 18 May 2009. At 12:00 noon the victim came along with another person. Both of them were allowed inside. He also stated that “the said vehicle came out of the Cargo premises with some persons in it” but he did not see the victim.
- Zamir Hussain Teli, stated that on 18 May

2009 at about 11:30 am he made a phone call to Hilal Ahmad alias Sahaba. Then they met, following which Hilal Ahmad called up Inspector Khursheed Ahmed Wani and then both the witness and Hilal Ahmad went to the Cargo camp. Discussions on monetary transactions took place between the victim and Hilal Ahmad. Following the conclusion of these discussions, the victim felt giddy and fell down.

- Khursheed Ahmad Wani, stated that on 18 May 2009, the victim threatened Hilal Ahmad alias Sahaba, a relative of his. The victim then came to the witness alone, with no one accompanying him. Hilal Ahmad and Zamir Hussain also came to the office. Subsequently, Imtiyaz Ahmad, a STD owner, also came to the room. The transactions were concluded and then the victim felt giddy.
- Mir Mudasar, apparently a friend of a friend of Inspector Khursheed Ahmed Wani testified to the events on 18 May 2009. The witness testified to seeing Hilal Ahmad alias Sahaba and Zamir Hussain. Further, he refers to another person who was called in and discussions took place on monetary transactions. The victim felt giddy and fell down.
- Hilal Ahmad alias Sahaba also testified to the threat he received from the victim and maintained that the victim felt giddy and fell down as he was leaving the office of Inspector Khursheed Ahmed Wani.

The witness statements above do contradict each other in certain respects. Imtiyaz Ahmad Bhat says he went into the camp at 1:40 pm whereas Mohammad Sultan says he called at 1:30 pm and Sameer Ahmad Bakshi told him that the victim was being taken to the hospital. Further, Zahoor Ahmad testified that both the victim and another person, with him, were allowed inside the camp. But, Inspector Khursheed Ahmed Wani contradicts this portion of the evidence as he says the victim came to him alone.

But, the crucial evidence appears to be that of the eye-witnesses. Imtiyaz Ahmad Bhat's testimony clearly favors Inspector Khursheed Ahmed Wani. But, it could be argued that the witness did not have an opportunity to view the entirety of interactions between the victim and Inspector Khursheed Ahmed Wani. Zamir Hussain Teli's evidence is also strongly in favor of the alleged perpetrators but it may well be considered to be biased evidence considering his proximity to Hilal Ahmad alias Sahaba and the fact that since he was present during the interaction he too could be implicated in the crime, if admitted. The same might also be said of Mir Mudasar. Crucially perhaps, Inspector Khursheed Ahmed Wani, in his evidence, **does not state that the victim fell down at any point.** This could be a crucial piece of evidence.

In light of the above documentation in the case, a few key observations may be made: the investigations in the case appear to have been consistently doubted

and faulted. The SHRC record, and particularly the evidence of the doctors before the SHRC, strongly point to a unnatural cause for the death of the victim. It is undeniable that the victim was in the custody of the alleged perpetrator no.1, following which he died.

In light of the above, it is clear that the case should not have been closed, and it should have instead been investigated in a fair, professional and thorough manner which does not appear to be the case.

Further, while the statements available on record [during the enquiry conducted by the Additional District Developmental Commissioner] do, in part, favor the alleged perpetrators, it is clear that further investigations would be needed and clearly the involvement of the alleged perpetrators in the murder of the victim cannot be ruled out.

The Special Mobile Magistrate, PT&E Srinagar, without giving an opportunity to the informant [family of the victim], which is mandatory as per law, closed the case.

Finally, in addition to the culpability of the alleged perpetrators in this case, the role of the Doctors also needs to be strongly scrutinized due to their contradictory statements.

Case No. 181

Victim Details

Wamiq Farooq [Extra-Judicial Killing]

Age: 12

Occupation: 7th standard student

Son of: Farooq Ahmad Wani

Resident of: Channa Mohalla, Rainawari, Srinagar

Alleged Perpetrators

1. Assistant Sub-Inspector [ASI] Abdul Khaliq, Jammu and Kashmir Police
2. Constable Mohammad Rafiq, Jammu and Kashmir Police
3. Nazir Ahmad, Driver, Jammu and Kashmir Police
4. Nissar Ahmad, Selection Grade Constable, Jammu and Kashmir Police
5. Mohammad Akram, Special Police Officer [SPO], Jammu and Kashmir Police

Case Information

The family of Wamiq Farooq states that he was killed by the alleged perpetrators by a tear gas shell on 31 January 2010 near the mosque adjacent to the Gani Memorial Sports Stadium, Rajouri Kadal, Srinagar at about 4:30 pm. On the day of the incident, Wamiq

Farooq had gone to play cricket at the Gani Memorial Sports Stadium. The ground was wet and therefore Wamiq Farooq was playing carom when one of the alleged perpetrators got out of the police vehicle and fired a tear gas shell from a distance of about 30 feet directly at the head of the victim.

First Information Report [FIR] no.12/2010 u/s 148 [Rioting armed with deadly weapon], 149 [Liability for other members of unlawful assembly], 307 [Attempt to murder], 332 [Causing hurt to deter public servant from duty], 336 [Act endangering human life/personal safety], 353 [Assault/Criminal force to deter public servant from discharging duty], 427 [Mischief causing damage of Rs.50 and upwards] Ranbir Penal Code, 1989 [RPC] was filed at Nowhatta Police Station. The FIR stated that on 31 January 2010 at about 4:45 pm there was an unruly mob armed with sticks, stones and other similar objects and these objects were used to attack the police party, including the alleged perpetrators listed above near the Islamia School area. During these events, an unknown boy was hit by a tear gas shell at Dompura Gani Stadium¹⁷⁶.

The father of the victim filed an application before the Chief Judicial Magistrate [CJM], Srinagar, for the registration of an FIR. A letter from the Senior Superintendent of Police [SSP], Srinagar, dated 19 February 2010, to the Chief Prosecuting Officer, Sadder Court, Srinagar, on the application of the father of Wamiq Farooq, states that the investigation was ongoing but that preliminary findings point towards the action of the police as having been done in self-defence.

The CJM, considered the above submissions, and witnesses on behalf of the father of Wamiq Farooq, who stated that Wamiq's death was a cold blooded murder. On 5 February 2011, the CJM ordered that a Special Investigating Team be set up to investigate the matter. This order of the CJM, Srinagar was challenged by the Government of Jammu and Kashmir before the Principal District and Sessions Judge, Srinagar on the ground that the CJM had no power to set up a Special Investigating Team. On 2 May 2011, the Principal District and Sessions Judge, Srinagar, confirmed the order of the CJM and stated that the Special Investigating Team would be at liberty to file a fresh FIR as well.

The above orders were challenged in the High Court of Jammu and Kashmir [561-A petition no. 64/2011]. On 9 August 2011 the petition was dismissed. The order of the High Court was challenged before the Supreme Court [SLP (Crl.) no.2245/2012]. The SLP was dismissed by the Supreme Court and the CJM was seized of the matter again but to date there have been no arrests and/or prosecution.

¹⁷⁶ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By letter dated 2 June 2012 a copy of the FIR was provided.

The conduct of the police is questionable in this case as it has filed a FIR against the protestors and the deceased but has ignored its responsibility with regard to the investigation of the extra-judicial killing. The 2 May 2011 order of the Principal District and Sessions Judge, Srinagar, confirmed by the High Court on 9 August 2011, should have specifically ordered the filing of a FIR for the killing of Wamiq Farooq based on the prima facie evidence.

This case was one of the triggers of the 2010 uprisings.

Case No. 182

Victim Details

Zahid Farooq Sheikh [Extra-Judicial Killing]

Age: 16

Son of: Farooq Ahmad Sheikh

Resident of: Sheikh Mohalla, Brein, Nishat, Srinagar

Alleged Perpetrators

1. Commandant Randeer Kumar Birdi, 68th Battalion Border Security Force [BSF]
2. Constable Lakhwinder Kumar, 68th Battalion Border Security Force [BSF]

Case Information

On 5 February 2010, Zahid Farooq Sheikh left home to play cricket along with his friends. When they reached the playground they found it wet and decided not to play. All the boys except the victim and Mushtaq Ahmad Wani returned to the locality. The victim and Mushtaq Ahmad Wani went to the Boulevard road and sat on the bank of the lake on the roadside. Three BSF vehicles, a Bolero, a Gypsy and a 407 Matador, coming from Lal Chowk Side stopped in front of them. The Bolero was inscribed with a Hangul [Stag] sign on it. Few BSF personnel asked the boys why they were outside on the day of a strike. The family of the victim states that there was in fact no strike on that day. The BSF personnel then abused them and told them to leave the place immediately. The boys then started to leave. They got afraid and crossed the road for moving back to their locality. At this point, Commanding Officer Randeer Kumar Birdi stepped down from his car and asked Constable Lakhwinder Kumar to open fire on the boys. Constable Lakhwinder Kumar did not fire. Commanding Officer Randeer Kumar Birdi repeated his order upon which Constable Lakhwinder Kumar merely cocked his gun. At this the Commanding Officer Randeer Kumar Birdi abused Constable Lakhwinder Kumar and forced him to shoot. The boys started to run as they were fired upon by Constable Lakhwinder Kumar. One of the bullets pierced through the victim's chest. Even after

the bullets were fired both the boys continued to run for safety and the BSF personnel chased them. The victim collapsed near his locality.

First Information Report [FIR] no. 4/2010 u/s 302 [Murder], 109 [Abetment], 201 [Causing disappearance of evidence/giving false information] Ranbir Penal Code, 1989 [RPC] was filed at the Nishat Police Station¹⁷⁷. The 2 June 2012 communication of the Jammu and Kashmir Police stated that the case had been chargesheeted.

An enquiry was ordered in the matter to be conducted by the Divisional Commissioner, Kashmir, Ms. Naseem Lankar¹⁷⁸.

A charge sheet against the alleged perpetrators was filed before the Chief Judicial Magistrate [CJM], Srinagar on 6 April 2010. An application was moved before the CJM by the BSF to exercise the option of a court-martial by the BSF under the BSF Act, 1968 read with Section 549 [Delivery to military authorities of persons liable to be tried by Court-Martial] Criminal Procedure Code, 1989 [CrPC].

On 25 November 2010 the CJM passed its decision allowing for the court-martial of the alleged perpetrators. The CJM held, firstly, that the visit for an annual medical examination [and the return journey] were a part of the official duty of the alleged perpetrators. Further, the CJM held that the specific instance took place while the alleged perpetrators were on "active duty". On 21 October 2011 the High Court of Jammu and Kashmir [following Criminal Revision Petitions filed [and combined] 30/2010 and 32/2010] confirmed the decision of the CJM¹⁷⁹. Ultimately the Supreme Court also paved the way for a court-martial.

The BSF instituted a trial by the Security Force Court against the alleged perpetrators. The present status is not known.

The prima-facie involvement of the alleged perpetrators in the instant case is beyond doubt and uncontested by the BSF. A charge-sheet has been filed and a court-martial process instituted by the BSF. The key issue that faces the family of the victim is whether the BSF has a right to try the alleged perpetrators in the court-martial. Before considering this legal issue, a few remarks may be made on the evidence established in the case thus far:

- The chargesheet filed in the case states that during investigations, Constable Lakhwinder Kumar implicated Commanding Officer Randeer Kumar Birdi. The chargesheet, based on investigations, implicates Commanding Officer Randeer Kumar Birdi u/s 302 [Murder], 109 [Abetment] and 201 [Causing disappearance of

177 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 2 June 2012 from the Jammu and Kashmir Police, a copy of the FIR was provided.

178 The Tribune, <http://www.tribuneindia.com/2010/20100211/main3.htm>, 10th February 2012.

179 Information on the petition numbers was sought through RTI on 2 July 2012. Information was provided.

evidence/giving false information] Ranbir Penal Code, 1989 [RPC], and Constable Lakhwinder Kumar u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC].

- A BSF document on record confirms that on the day of the incident, the Commanding Officer Randeer Kumar Birdi had at his disposal a “Tata 407”, “Gypsy” and “Bolero” vehicle, thereby mostly confirming the eye-witness testimony on the three vehicles present at the scene of the crime.
- The Section 164-A [Evidence of material witnesses to be recorded by Magistrate in certain cases] Criminal Procedure Code, 1989 (CrPC) statement of Mushtaq Ahmad Wani [dated 9 February 2010] confirms the details, as recounted above, of the incident. It should be noted that in his statement the witness does not refer to the “Bolero” vehicle at the scene of the crime. This would appear to be a minor inconsistency between the version of the family of the victim and the witness.
- The CJM, in his order, terms the incident as “unfortunate and bizarre”. The CJM confirms that the incident took place and states that this was when the BSF personnel were on their way back from the Composite Hospital, Humhama after the annual medical examination of Commanding Officer Randeer Kumar Birdi, to their headquarters at Nishat. The CJM confirms that the victim and his friend were chased for about 50/60 yards, following which on the orders of Commanding Officer Randeer Kumar Birdi, Constable Lakhwinder Kumar shot at and killed the victim. The CJM in his order also states that the alleged perpetrators not only fled from the spot but also concealed the incident and fabricated evidence such as the number of rounds remaining in the gun.

The main argument before the CJM [and then the High Court and presently the Supreme Court] revolves around the legal issue of whether the alleged perpetrators were on active duty during the incident. The BSF authorities argued that the alleged perpetrators were on active duty [Constable Lakhwinder Kumar as a bodyguard for Commanding Officer Randeer Kumar Birdi] as the medical examination came within the term “duty”. Reference was also made to a Government of India notification [SO 1473 (E)] dated 8 August 2007 that states that Jammu and Kashmir is an area of active service for the BSF. A detailed analysis of the provisions and the law will not be carried out here. But, the instant case serves as another example of the armed forces not submitting themselves to the civilian court process by interpreting provisions of the law to effectively shield themselves from a transparent prosecution. In this case the Supreme Court also stands by its decision that allowed for a court-martial process.

Case No. 183

Victim Details

Zubair-ul-Hassan Bhat [Extra-judicial killing]

Age: 15 years

Son of: Ghulam Hassan Bhat

Resident of: Jamia Qadeem, Sopore, Baramulla District

Alleged Perpetrators

1. Altaf Ahmad Khan, Superintendent of Police [SP], Jammu and Kashmir Police
2. Harmeet Singh, Deputy Superintendent of police [DSP], Jammu and Kashmir Police
3. Aftab, Station House Officer [SHO], Sopore Police Station, Jammu and Kashmir Police
4. Irfan, Assistant Sub-Inspector [ASI], Jammu and Kashmir Police

Case Information

On 13 April 2010, the victim was killed by personnel of the Jammu and Kashmir Police and Central Reserve Police Force [CRPF], and specifically the alleged perpetrators named above.

On that day, Zubair, along with four other young boys, went out to play cricket in the afternoon hours at MET School, Muslim Educational Trust Ground. After playing till afternoon he came home to have lunch then went again to play.

The police and CRPF were deployed all over. While going back to the ground Zubair and other boys went by the river side and the alleged perpetrators were on the bridge on the river from where the boys crossed. This story was later narrated by the other boys who survived. They said that the SHO Aftab called on his men to arrest these boys. The forces came from two sides to arrest him. The boys tried to run away. They reached near the river where they had no choice other than to jump into the river. When the forces came nearer they jumped into the river.

There were five boys in total. Two of them were: Jan Mohammad Kanna son of late Mohammad Shafi Kanna, and Mehrajuddin Radoo son of Mohammad Ashraf Radoo, both residents of Jamiaqadeem, Sopore.

All the five boys jumped into the river. The police threw stones towards them. There were many people who were watching this incident. But they could do nothing. Zubair did not know swimming but Mehrajuddin Radoo held him and tried to take him across. But a stone hit Mehraj on his arm due to which he lost hold of Zubair and he drowned away and died.

Meanwhile the people who were watching started protesting against the police and started stone pelting. There was no stone pelting before this. The police party who were throwing the stones was commanded by ASI Irfan. Some locals who saw this approached the family and told them about the incident. People

around had already started searching for him.

The father of the victim, Ghulam Hassan, also reached the place of incident and he too tried to find the body of his son but all in vain. Then he went onto the bridge where the four alleged perpetrators were along with CRPF. He asked them to stop shelling on the protest and to help find his son. But, they beat Ghulam Hassan instead of helping him. Ghulam Hassan then lay down in front of their vehicle. SP Altaf Khan told his personnel to drive the jeep over Ghulam Hassan and send him where his son had gone. Then the public took Ghulam Hassan away from there and took him to his house. The boat men started then to search for the victim's body but teargas shelling was now directed at them.

After three hours the body of the victim was found by boat man namely Zahoor Ahmad Dar and the body was taken to the Jamia masjid. After that he was taken for last rites and was buried. On the next day curfew was imposed without intimation. Ghulam Hassan was coming from morning after offering morning prayers along with Manzoor Ahmad Bhat, a neighbor. They were both called by Harmeet Singh to come near to him and he told them not to allow anyone to come to their house for condolences. Ghulam Hassan replied that they had killed his son and he was going to fight them legally. There were other policeman with Harmeet then.

Then Ghulam Hassan approached Police Station Sopore on the next day. There DSP Harmeet and SHO Aftab told him that if he filed the FIR they would do kill him in a staged encounter. Finally, after two years and the court intervention the FIR was filed. But, to date, there have been no fair investigations against the accused.

The father of the victim, Ghulam Hassan Bhat, gave the above statement to the IPTK on 20 August 2015.

Following the killing of Zubair, the police refused to file a FIR for murder and threatened action against the family of the victim. Instead, the police filed a FIR [FIR no. 165/2010 at Sopore Police Station] against unknown persons for violence and stone pelting. Following a struggle of two years before the courts, the family of the victim managed to get a FIR filed for murder [FIR no. 93/2012 at Sopore Police Station]. Finally, as per RTI information received by communication dated 9 January 2014, the police closed FIR no. 165/2010 as untraced on 7 December 2011, and closed the FIR for murder, 93/2012, as not admitted on 24 February 2013. The police concluded by stating that Zubair died by accident. Following the filing of FIR 93/2012, about four-five months after, SHO Manzoor came to the family of the victim to take a statement. The father of the victim gave a detailed statement. But, later on the same day, the police returned with a statement that suggested that Zubair died by accident. The father of the victim rejected the

signing of this statement.

The statement of the father of the victim is clear and indicts the alleged perpetrators. Due to the nature of the incident, there is no doubt that extensive evidence would be available if the police were to carry out fair investigations. Further, it must be noted that this case is not the more typical cases of extra-judicial killing i.e. through the direct physical perpetrator crime. But, the circumstances created by the alleged perpetrators led to the death of the victim and therefore investigations must be carried out to assist the correct responsibility on the alleged perpetrators.

Case No. 184

Victim Details

1. Mohammad Shafi Lone, [Abduction and Extra-Judicial Killing (Fake encounter)]
Age: 19
Son of: Abdul Rashid Lone
Resident of: Nadihal, Rafiabad, Baramulla District
2. Shahzad Ahmad Khan, [Abduction and Extra-Judicial Killing (Fake encounter)]
Age: 27
Son of: Ghulam Mohammad
Resident of: Nadihal, Rafiabad, Baramulla District
3. Riyaz Ahmad Lone, [Abduction and Extra-Judicial Killing (Fake encounter)]
Age: 20
Son of: Mohammad Yousif Lone
Resident of: Nadihal, Rafiabad, Baramulla District

Alleged Perpetrators

1. Colonel D.K. Pathania, Commanding Officer, 4 Rajput Regiment, Army
2. Major Maurya, 4 Rajput Regiment, Army
3. Major Upinder, 4 Rajput Regiment, Army
4. Subedar Satbir Singh, 4 Rajput Regiment, Army
5. Havaldar Bir Singh, 4 Rajput Regiment, Army
6. Sepoy Chandra Bhan, 4 Rajput Regiment, Army
7. Sepoy Nagendra Singh, Rajput Regiment, Army
8. Sepoy Narendra Singh, Rajput Regiment, Army
9. Rifleman Abbas Hussain Shah, 161st Battalion Territorial Army
10. Bashir Ahmad Lone, Army informer
11. Abdul Hamid Bhat, Army informer

Case Information

On the intervening night of 29 and 30 April 2010, Mohammad Shafi Lone, Shahzad Ahmad Khan and Riyaz Ahmad Lone were abducted and then killed by

the alleged perpetrators at Sonapindi, Kalaroos, Kupwara.

The armed forces claimed that three foreign militants from Pakistan had been killed in a legitimate encounter. Contrary to the version of the army, it has been claimed that the victims were recruited to work as laborers for the army to move arms and ammunition near the Line of Control.

The Government of Jammu and Kashmir ordered a magisterial probe into the matter on 27 May 2010¹⁸⁰. Missing reports were filed in the Daily Diary of Police Station Panzalla in the matter on 10 May 2010.

First Information Report [FIR] no. 23/2010 u/s 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC] was filed at Panzalla Police Station on 20 May 2010¹⁸¹. The army filed FIR as well.

The dead bodies of the victims were exhumed on 28 May 2010.

It was reported that the State Human Rights Commission [SHRC] passed a decision in the matter. The army instituted a Court of Inquiry.

A letter on record dated 29 May 2010 from the Superintendent of Police [SP], Sopore to the Deputy Inspector General [DIG], Baramulla, states that investigations revealed the role of Bashir Ahmad Lone, Abdul Hamid Bhat and Abbass Hussain Shah in the crime. Bashir Ahmad Lone and Abdul Hamid Bhat were arrested on 26 May 2010, and Abbass Hussain Shah, of the 161st Battalion Territorial Army, was arrested on 27 May 2010.

A chargesheet was filed before the Chief Judicial Magistrate [CJM], Sopore on 15 July 2010. On 15 July 2010 Abbass Hussain Shah, Bashir Ahmad Lone and Abdul Hamid Bhat were sent to judicial lockup, and the other alleged perpetrators were ordered to present themselves and face the trial before the court. A revision petition was filed against this order before the District and Sessions Judge, Baramulla. The petition was dismissed on 13 December 2010.

The High Court was approached. The issue being litigated was the right of the accused to be tried by an army Court-Martial, and the procedural irregularities in the decision of the CJM, Sopore.

On 4 July 2012 the High Court set aside the lower

court orders paving the way for an army Court-Martial for all the army personnel indicted, except Abbas Hussain Shah. Subsequently, on 18 March 2013, on a fresh petition, the High Court allowed even Abbas Hussain Shah's proceedings to be at the option of the army¹⁸². Ultimately, the accused were convicted in court-martial.

This case was one of the triggers of the 2010 uprisings. While ultimately the accused were court-martialed, the fact is that it was not done in a civilian court – before the public – and the future status of the convictions remains to be seen.

Case No. 185

Victim Details

1. Ishtiyaq Ahmad Khanday [Extra-Judicial Killing]
Age: 16
Son of: Ghulam Ahmad Khanday
Resident of: S.K.Colony, Islamabad
2. Imtiaz Ahmad Itoo [Extra-Judicial Killing]
Age: 17
Son of: Abdul Ahad Itoo
Resident of: Watergam, Dialgam, Islamabad District
3. Sujat-ul-Islam Bhat (Baba) [Extra-Judicial Killing]
Age: 22
Son of: Muhammad Ashraf Baba [deceased]
Resident of: Anchidora, Azadpora, Islamabad District

Alleged Perpetrators

1. Ayoub Rather, Station House Officer [SHO], Jammu and Kashmir Police
2. Rouf, Station House Officer [SHO], Mattan Police Station, Jammu and Kashmir Police
3. Constable Nissar Ahmed Lone, Saddar Police Station, Jammu and Kashmir Police
4. Constable Sartaj Ahmed, Jammu and Kashmir Police
5. Sub-Inspector [SI] Feroz Ahmad, Jammu and Kashmir Police
6. Sub-Inspector [SI] Farooq Ahmad, Jammu and Kashmir Police

Case Information

On 29 June 2010 at about 4:00 pm there was stone pelting taking place at least 1.5 km from the place of the incident. Following his lunch, Sujat-ul-Islam left to

180 IPTK, Fake Encounters and State Terror in Kashmir: A Brief, IPTK, 6 June 2010.

181 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. No information was provided. A RTI was filed on 18 December 2012 to Jammu and Kashmir Police regarding custodial killings in Jammu and Kashmir between 1989 and 2012. By communication dated 13 March 2013, a copy of the FIR and chargesheet was provided. Further information sought through RTI on 15 October 2013. By communication dated 9 January 2014 a copy of the FIR and chargesheet were provided again and it was stated that chargesheet was filed on 15 July 2010.

182 Kashmir Reader, <http://www.kashmirreader.com/03192013-ND-machil-fake-encounter-hc-allows-army-to-court-martial-local-soldier-12944.aspx>, 19 March 2013.

offer prayers and meet his teacher. On the way, he was caught by the police and shot. This was during an operation of the police and CRPF. At the same time, Ishtiyahq Ahmad Khanday and Imtiaz Ahmad Itoo had also received bullet wounds. SHO Ayoub Rather, SHO Rouf and Constable Nissar Ahmad Lone were responsible for the shooting of the victims. All three victims died. In addition to the death of the three victims, eight other persons were injured during this incident.

The family of Imtiaz Ahmad Itoo and Sujat-ul-Islam gave statements to the IPTK on 13 May 2012. The family of Ishtiyahq Ahmad Khanday and Sujat-ul-Islam gave statements [second statement from the family of Sujat-ul-Islam] to the IPTK on 20 May 2012.

First Information Report [FIR] 261/2010 u/s 302 [Murder] was filed at Anantnag Police Station¹⁸³. The FIR states someone from a procession shot and that resulted in injuries.

In response to a statement by the Government of Jammu and Kashmir on 5 March 2012 that over the last three years, 444 FIR's had been filed against the armed forces and the police, information was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on these cases. On 19 May 2012 information was provided that the case had been chargesheeted.

Further, information was provided that the FIR had been filed u/s 141 [Unlawful assembly], 307 [Attempt to murder], 332 [Causing hurt to deter public servant from duty], 149 [Liability for other members of unlawful assembly] Ranbir Penal Code, 1989 [RPC] and 27(1) [Punishment for using arms without licence in contravention of section 5] Arms Act, 1959.

A death certificate from the Medical Superintendent, Mirza Mohammad Afzal Beg Memorial Hospital, Islamabad, dated 21 January 2011, confirms that Ishtiyahq Ahmad Khanday was brought dead as a case of bullet injury on 29 June 2010.

As reported in the media, the magisterial inquiry was conducted and SI Feroz Ahmed, SI Farooq Ahmed, Constable Nissar Ahmed and Constable Sartaj Ahmed were indicted.¹⁸⁴ A Special Investigating Team [SIT] was constituted in this case¹⁸⁵. On 29 March 2011, the Principal District and Sessions Judge, Anantnag framed murder charges against Constable Nissar Ahmad Lone, and directed the Inspector General of Police [IGP], Kashmir to carry out further investigations within a month.

Subsequently, Constable Nissar Ahmad Lone was also granted bail.¹⁸⁶

The family of Ishtiyahq Ahmad Khanday also stated that they had received Rs.5,00,000 from the Government of India.

The Government of Jammu and Kashmir instituted a Commission of Inquiry vide SRO [Statutory Rules and Orders] no.283/2010 dated 29 July 2010 to enquire into 17 cases of extra-judicial executions in 2010, including the instant case.

The Commission was headed by Justice [Retired] Syed Bashir-ud-Din and Justice [Retired] Y.P.Nargotra as member.

The Central Reserve Police Force [CRPF] by filing Original Writ Petition (OWP) 38/2011 in the High Court of Jammu and Kashmir contested the jurisdiction of the Government of Jammu and Kashmir in conducting investigations and prosecution under the provisions of the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA]. The High Court issued a stay order restraining the Commission from finalizing its report.

The staying of the Commission of Inquiry in the instant case serves as an example of the impediments placed on processes of justice in Jammu and Kashmir. While enquiries in Jammu and Kashmir have routinely proved ineffectual, the stay order strengthens impunity.

Case No. 186

Victim Details

Faizan Ahmad Buhroo [Extra-Judicial Killing]
Age: 13
Occupation: 7th standard student
Son of: Rafiq Ahmad Buhroo
Resident of: Jalal Sahib, Old town, Baramulla

Alleged Perpetrators

1. Tanveer Ahmad Mir [Operational name: Kaka Mir], Special Operations Group [SOG], Jammu and Kashmir Police

Case Information

On 17 July 2010 at around 3:30 pm, while there was curfew in the area, Faizan Ahmad Buhroo left his residence and went out with other children. According

183 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. By communication dated 24 August 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. By communication dated 16 November 2013 from the Jammu and Kashmir Police a copy of the chargesheet was provided.

184 Greater Kashmir, <http://www.greaterkashmir.com/news/2011/Mar/31/govt-takes-disciplinary-action-against-ssp-50.asp>, 31 March 2011.

185 Kashmir Life, http://kashmirlife.net/index.php?option=com_content&view=article&catid=16%3ASpecial-report&id=780%3Awitnessing-murder&Itemid=158.

186 Greater Kashmir, <http://www.greaterkashmir.com/news/2011/Sep/27/accused-cops-granted-bail-77.asp>, 27 September 2011.

to eye-witnesses Tanveer Ahmad and other SOG personnel chased the children. Faizan Ahmad Buhroo ran over the Azadgunj bridge. He was caught at the centre of the bridge. Tanveer Ahmad hit him on his head with his gun butt and Faizan Ahmad Buhroo became unconscious. Faizan Ahmad Buhroo was then thrown into the river. Because other youth had also jumped into the river, the police also fired tear gas shells into the river.

The body of Faizan Ahmad Buhroo was recovered from the river subsequently on 19 July 2010. The family of Faizan Ahmad Buhroo states that prior to the incident Tanveer Ahmad had harmed the victim.

In June 2009, during the agitations, he shot Faizan Ahmad Buhroo in his leg. Further, a few days before the incident he threw a stone at Faizan Ahmad Buhroo and hurt his eye. The family also states that an eye-witness to the killing of Faizan Ahmad Buhroo gave a statement to the police. The eye-witness was then harassed as his brothers were picked up on false charges and tortured.

When Faizan Ahmad Buhroo's body was recovered on 19 July 2010 there were protests. A boy named Fayaz Ahmad Khanday was killed during the firing to disperse the protestors.

The family of Faizan Ahmad Buhroo gave a statement to the IPTK on 30 December 2011.

First Information Report no.132/2010 was filed at the Baramulla Police Station on 19 July 2010¹⁸⁷. The FIR was filed following a letter from the District Magistrate. The FIR names the alleged perpetrator. The case was closed as not made out on 30 January 2013 by the Jammu and Kashmir Police, but it is uncertain whether this was filed before a court, as required by law.

The family of Faizan Ahmad Buhroo did not pursue the case out of fear. They state that Tanveer Ahmad apologized for what he had done and his father put up posters in the area regarding the same. A copy of the poster is with the IPTK. Apparently, Tanveer Ahmad has not refuted the authenticity of the poster. The family received Rs.5,00,000 as compensation from the Deputy Commissioner, Baramulla.

The Government of Jammu and Kashmir instituted a Commission of Inquiry vide SRO no.283/2010 dated 29 July 2010 to enquire into 17 cases of extra-judicial executions in 2010, including the instant case.

The Commission was headed by Justice [Retired] Syed Bashir-ud-Din and Justice [Retired] Y.P.Nargotra as member.

The Central Reserve Police Force [CRPF] by filing Original Writ Petition (OWP) no.38/2011 in the High Court of Jammu and Kashmir contested the jurisdiction of the Government of Jammu and Kashmir in conducting investigations and prosecution under the provisions of Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA].

The High Court issued a stay order restraining the Commission from finalizing its report.

The conduct of the CRPF in approaching the High Court against the functioning of the Commission of Inquiry has subverted the mechanisms of investigation. Particularly as in the instant case the alleged perpetrator did not belong to the CRPF.

Further, the Jammu and Kashmir Police by its own investigation without waiting for the report of the Commission of Inquiry should have proceeded to finalise the investigation and file a chargesheet in court, as opposed to closing the case as they have done. This particularly as the name of the alleged perpetrator is known to the family of the victim, and is in the FIR as well.

Case No. 187

Victim Details

Tariq Ahmad Dar [Torture, Extra-judicial killing]

Age: 20

Occupation: Farming [9th pass; left studies because of family's economic condition]

Son of: Ghulam Mohiddeen Dar

Resident of: Fidarpora, Dangiawacha, Rafiabab, Baramulla district

Alleged Perpetrators

1. Altaf Ahmad Khan, Superintendent of Police [SP], Baramulla, Jammu and Kashmir Police
2. Ali Mohammed, Havaladar / Munshi in Panzalla Police Station, Jammu and Kashmir Police
3. Mohammed Shafi, Havaladar, Panzalla Police Station, Jammu and Kashmir Police
4. Ghulam Nabi, Havaladar, Panzalla Police Station, Jammu and Kashmir Police

Case Information

On 19 July 2010, Tariq was picked up by Havaladars Ali Mohammad Munshi, Mohammed Shafi and Ghulam Nabi, along with other boys from the same village namely, Riyaz Ahmed Lone, Shahzad Malla, Showkat Dar and Shaya Dar. They were all taken to the police post at Fidarpora.

Tariq's family rushed to the police post and was told

¹⁸⁷ Information on this FIR was sought through Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. By communication dated 30 November 2013 from Jammu and Kashmir Police a copy of the FIR and closure report was provided. By communication dated 22 April 2014 additional investigative documents were provided.

that he would be released after being questioned by SP Altaf Khan. However, the next day SP Altaf Khan said that Tariq would be released after a statement is taken from him. By noon, Tariq was taken to the Panzalla Police Station, whereas all the other boys arrested along with him were released. Tariq was detained at this Police Station from 19 to 25 July. On 25 July, he conveyed to his family that he felt that the police was planning to kill him as the police personnel stationed at Panzalla were receiving calls from senior officers and that he wasn't subjected to any questioning by the police.

Three days after his arrest, his uncle Abdul Khaliq Dar was also arrested and detained in the same police station. Abdul Khaliq Dar was released in the morning of 26th July and on the same day, the police called Tariq's other uncle Abdul Majeed Dar, village head Ali Mohammed Dar, and a maternal uncle Ghulam Mohammed Dar to the police station. The SP informed them that they were sorry about the accident. When they asked the SP what he was talking about, he informed them that Tariq had died.

The police asked the family to bury his body on the same night. Once the body was brought to the village, the army and the police cordoned off the whole area and they banned the movement of people. The family found that Tariq's back had been burnt and that he had been stifled to death. Abdul Khaliq later said that on the evening of 25 July, Tariq had been taken out of his lock up and was taken to an unknown location in a police vehicle.

Tariq had been killed during police torture but the police filed a case saying that he had committed suicide. They claimed that Tariq used a rope to commit suicide. But his family said that the police had tortured Tariq to death and later made up this story to cover up the case.

Further, the Sub-District Magistrate [SDM] of Sopore later ruled out the possibility of suicide, as Tariq was about 6 feet tall while the window of the lock up was about 5 feet in height.

The family said that the police had actually wanted to implicate Tariq in the case of shooting a civilian, Abdul Majeed Lone, a mason, but the latter had seen two members of the special operations group fire at him, who later entered the police post.

The family was not able to approach their local MLA because at that time [in 2010], there were indefinite curfews in the region.

The family said that SP Altaf had initially planned to release all the boys of the village, as he was busy with agitators and stone pelters in Sopore. But according to some locals, two persons had some animosity with Tariq's family and had suggested to SP Altaf that he keep Tariq in custody for a few more days. The SP said that he would release all the boys once the agitation got over. But the family believes that due to the above-mentioned suggestions, Tariq was retained. The family later added that the person who

gave the suggestion to SP Altaf is not reliable and that the family was the only poor family in the area and that made it easy for the police to stretch Tariq's detention.

The SDM was entrusted with the task of conducting an enquiry in this case. The family was informed by the SDM that he had submitted the report to the Deputy Commissioner of Baramulla. When the family got in touch with the Deputy Commissioner, he said that the case had been forwarded to the Home Ministry.

Ex-gratia relief was provided to the family on the same day the body was handed over to the family.

The father of the victim, Ghulam Mohiddeen Dar, gave the above statement to the IPTK on 27 May 2014.

On record is the FIR no. 36/2010 under section 307 [attempt to murder] Ranbir Penal Code [RPC] and sections 7, 27 Arms Act dated 17 July 2010 at Panzalla Police Station. Information on this FIR was sought through RTI dated 14 November 2014. By communication dated 5 January 2015 from the Jammu and Kashmir Police information was provided that the case had been closed as untraced. A copy of FIR and final report were provided. Therefore, the police has closed the case.

On file is also a decision of the State Human Rights Commission [SHRC] dated 25 June 2014. The matter had been taken cognizance of suo-moto and this was clubbed with the complaint filed by the father of the victim. Director General of Police [DGP] submitted a report before the SHRC. The police stated that FIR no. 36/2010 was filed at Police Station Panzalla on a firing against a person named Abdul Majid Lone. The victim was arrested under this FIR on 19 July 2010. The victim confessed his involvement in the crime. In the early hours of 25 July, the sentry saw that the victim had hung himself from the window. The matter is under investigation. The Deputy Commissioner submitted a copy of the SDM report. The SDM found that the "apparent cause of death seems due to hanging coupled with marks of torture on the back of the body". The SDM concluded that either the victim was "compelled" to commit suicide as evidenced by the torture marks, or he was so "involved in the underground works that he could not find any safer place live once released". But, in either case, the SDM concludes it was suicide. The SHRC investigation wing visited the scene of crime. The investigations found that the height of the lock up – from the floor to the ventilator – was 5 feet and 3.5 inches. The victim was supposedly 6 feet tall. The investigations could not conclude definitively that torture was not possible.

Based on the above, the SHRC found that the victim had been tortured and that he may have been compelled to commit suicide and held the police personnel – in whose custody the victim was – responsible.

The statement of the family of the victim clearly indicts the alleged perpetrators. The SHRC decision does

not properly analyze the evidence but does confirm torture. The allegations clearly warrant further investigations and prima facie the role of SP Altaf Ahmad Khan is made out. But, the other personnel who tortured the victim would need to be identified.

Case No. 188

Victim Details

Mehraj-ud-Din Lone [Extra-Judicial Killing]

Age: 22

Occupation: Vegetable seller

Son of: Muhammad Maqbool Lone

Resident of: Barthana, Qamarwari, Parimpora, Srinagar

Alleged Perpetrators

1. Sabzar Ahmad, Qamarwari Police Post, Jammu and Kashmir Police

Case Information

The family of Mehraj-ud-Din Lone states that on 3 August 2010 the victim went outside the house at about 9:00 am. It was a day of a public strike. Mehraj-ud-Din Lone was walking just outside the house.

In the meanwhile, Central Reserve Police Force [CRPF] and police personnel started chasing locals away from both sides of the road where the Mehraj-ud-Din Lone was walking. From the main road, Sabzar Ahmad of the Jammu and Kashmir Police came along with his personnel. Mehraj-ud-Din Lone was standing outside and he was shot in the chest.

After shooting the victim Sabzar Ahmad ran away from the locality and the CRPF cordoned off the area. When the locals tried to carry Mehraj-ud-Din Lone to the hospital, they were not allowed to do so. Mehraj-ud-Din Lone died on the spot.

The family of Mehraj-ud-Din Lone states that they did not file a case as there was no one in the family in a position to do so. Rs.5,00,000 was given to the family – 80,000 to the father and mother of the victim and the rest to the victim's wife and son.

The family of the victim gave a statement to the IPTK on 2 March 2012.

IPTK sought information through the Jammu and Kashmir Right to Information Act, 2009 [RTI] about all the cases filed against the Jammu and Kashmir Police and personnel of the armed forces between the period of 2009 and 2011. Based on the responses received so far there appears no mention of this case.

Case No. 189

Victim Details

Omar Qayoom Bhat [Abduction, Torture and Extra-Judicial Killing]

Age: 17

Son of: Fareeda Bhat, Abdul Qayoom Bhat

Resident of: Soura, Srinagar

Alleged Perpetrators

1. Abdul Majeed Malik, Inspector, Station House Officer [SHO], Soura Police Station, Jammu and Kashmir Police
2. Zahoor Ahmad, Sub-Inspector [SI], Soura Police Station, Jammu and Kashmir Police

Case Information

On 20 August 2010, Omar Qayoom Bhat, after offering his Namaz-e-Jummah, returned home. After staying at home for a while, Omar Qayoom went outside to watch the protests [stone pelting]. He was standing beside the milk shop near his house when the Jammu and Kashmir police deployed at Sabzi Mandi apprehended him. Two other boys, Irshad Ahmad Bhat and Amir Bashir Sheikh, were also arrested. The other two boys were placed inside the jeep but the victim was beaten using a pipe on the Sabzi Mandi Street itself. The CRPF and Jammu and Kashmir personnel not only stood on him but also kicked and hit him on his chest. The boys were accused of compelling the shopkeeper to shut down his shop.

The father of the victim, Abdul Qayoom Bhat, was also present during this violence committed by the CRPF and Jammu and Kashmir police. But he was not aware of the fact that the person who was ruthlessly beaten on the streets was his son. Later on, the boys were taken to the police station Soura. Civilians tried following the jeep, as they thought that the boys might be killed. But the Jammu and Kashmir police fired in open air to disperse the crowd. Meanwhile, the other two boys tried to escape but were caught and again put inside the jeep by the Jammu and Kashmir police and were taken to the police station.

When Abdul Qayoom Bhat returned home, his wife told him that Omar is not back yet. His parents tried to contact him via phone but it was switched off. The same day around 5:30 pm, Abdul Qayoom Bhat went to police station Soura where he met Sub Inspector Zahoor. He stated that the Jammu and Kashmir police might have taken his son by mistake. When Zahoor asked his son's name, Abdul Qayoom Bhat replied "Omar". As a result, he was taken to his son. Omar was lying down. He was unable to move or talk. Omar whispered to his father to take him to the hospital. When Abdul Qayoom Bhat requested Zahoor to allow him to take him to the hospital, Zahoor refused and replied that he had been picked up by the DSP. Therefore, he could not release him.

In a while, when the SHO entered the Police station, Abdul Qayoom Bhat requested him as well. In return, the SHO said, "we will take him to the hospital for the

treatment if we feel it is required". Not wasting much time, Abdul Qayoom Bhat came outside the police station and called his brother, who was an Imam [and had friendly relations with the police], hoping that he could help. But the police personnel did not even accept his request.

The next day, again Abdul Qayoom Bhat went to the police station at around 9 am, requesting the officers to allow him to take his son to the hospital but his request was denied again. On the same day at 12 pm, Omar, along with the police personnel and a few civilians, went to the Tehsildar requesting for grant of bail. The SHO had sent an individual and asked him to collect Rs. 500 for bail. Omar was granted bail by 1 pm. As Omar was unable to move, his father Abdul Qayoom Bhat carried his son on his arms.

Omar's father had been told by the police personnel to visit the police station in order to collect the belongings of Omar but when they reached the police station, Omar was again placed behind bars. It was 4 pm when Omar's father Abdul Qayoom Bhat requested the SHO to release him, as he had received bail. But the SHO in return replied that, "You are not the prime minister, who is ordering me", and demanded Rs. 30000. Omar's family was not wealthy enough to pay such a large sum of money. Omar's father Abdul Qayoom Bhat told the SHO that he was from a poor family and could not afford to pay.

Omar's helpless father again called his brother. His brother asked the SHO that Omar had already received bail then why they had again placed him behind bars. It was 7 pm when the police personnel released Omar [in order to avoid future consequences, as the officials were aware of the fact that the boy would die]. He was soon rushed to SKIMS hospital, meanwhile the police personnel had already called the hospital and informed them about Omar and told them to refer him to home. Omar was brought back home, but he could not move or eat. He told his parents that he wanted to sleep. The following day, his condition worsened and he started vomiting blood. He was soon taken to the hospital where he died.

According to the eyewitnesses, Irshad Ahmad Bhat, son of Qadir Bhat [resident of Dar Mohalla, Soura] and Amir Bashir Sheikh, son of Bashir Sheikh [resident of Umarhair, Bauchpora], people who were watching Omar being beaten by the police were shouting that, "he will die, he will die".

The father of the victim, Abdul Qayoom Bhat, gave the below statement to the IPTK on 17 March 2015.

From torturing Omar Qayoom Bhat to avoiding the filing of a FIR, the conduct of the Jammu and Kashmir Police is an indicator of the lawlessness which drives the actions of the police, and which is in a big way responsible for strengthening the culture of impunity.

On file is a letter dated 13 December 2010, from

Mehraj-ud-Din Kakroo, Deputy Commissioner, Srinagar to the Jammu and Kashmir Home Department, it is noted that the next of kin of Omar Qayoom Bhat had sought ex-gratia government relief of Rs. 5,00,000 that was sanctioned by the Government of Jammu and Kashmir for persons killed in civil disturbance in Jammu and Kashmir since 11 June 2010. The next of kin of Umar Qayoom Bhat were said to have agreed to withdraw the case if provided the relief. The letter recommends that the relief be provided. The conduct of Mehraj-ud-Din Kakroo, Deputy Commissioner, Srinagar is against the principles of justice as he seems to be interested in persuading the family to withdraw the case against the sanction of Rs.5,00,000. The Deputy Commissioner, Srinagar, who is also the District Magistrate is bound by law to protect the rights of the people and also uphold the law. But, this letter apparently is in contravention to his designated responsibility where he is seen prioritizing the hushing up of the case rather than helping the processes of justice to prosecute the guilty officers for the heinous crime. Further, by terming the death of Umar Qayoom Bhat as a killing during a civil disturbance, this letter contradicts the stated position of the Jammu and Kashmir Police in this case where they have deposed that Omar Qayoom Bhat was rightfully arrested and released by due process of law in good health.

The inquest proceedings continue before the Chief Judicial Magistrate despite evidence that should lead to the filing of a FIR for murder and investigations. In fact the State human Rights Commission [SHRC] also did an enquiry and while it did not go as far as to name the alleged perpetrators the inquiry did find that the victim had been beaten by the police and not provided any medical check up and that this led to his death. Crucially, the SHRC concluded by stating that a fresh case should be registered and investigated.

Case No. 190

Victim Details

Maroof Ahmad Nath alias Raju [Extra-judicial killing]
Resident of: Islamabad

Noor-ul-Amin Dagga [Extra-judicial killing]
Resident of: Islamabad

Bilal Ahmad Najar [Extra-judicial killing]
Resident of: Islamabad

Alleged Perpetrators

1. Noor Mohammad, Deputy Superintendent of Police [DSP], Jammu and Kashmir Police

Case Information

In September 2010, three boys were killed in Islamabad. First killing is that of Maroof Nath alias Raju. Police followed him during stone pelting. He

jumped into the river and then police fired tear gas shells and stones towards him and did not allow him to come out from the river. Then he died and his body was found after six days near Urah Hall Bridge. DSP Noor Mohammad was present on the spot when police was firing shells and stones towards him in the river. He was commanding the personnel.

After his body was found his funeral was taken to the martyr's grave yard. A large number of people were participating in the funeral. On the way to martyr's grave yard police and Central Reserve Police Force [CRPF] personnel stopped the procession at bus stand Islamabad. Police opened fire at the procession which resulted in many bullet injuries. Then the procession returned and passed through Nai Basti road. When the funeral procession reached Nanda Bazar near Ahli Hadees Masjid, police was already deployed there along with DSP Noor Mohammad who ordered his men to open fire on the crowd. The first shot they fired hit Noor-ul-Amin Dacca, resident of Nai Basti near the temple. He received two bullets on his chest. Bilal Ahmad Najar tried to approach to the body to pick him but when he reached near the body he was also shot on his buttocks. Both were taken to District Hospital Janglat Mandi. Noor-ul-Amin died while being taken to the hospital and Bilal was referred to SKIMS, Soura, Srinagar. He was admitted there and died on the same night.

An eye-witness, Zubair Ahmad, gave the above statement to the IPTK on 28 July 2015.

The above eye-witness testimony against DSP Noor Mohammad is credible and indicts the alleged perpetrator. News reports state that the case is being monitored by the High Court of Jammu and Kashmir and the police investigations are being monitored. It is clear that the police has no interest in indicting the alleged perpetrator as testimonies such as the instant eye-witness testimony are not being recorded.

Case No. 191

Victim Details

Danish Nabi Kumar [Extra-judicial killing]
Occupation: Student
Son of: Razia Kumar and Ghulam Nabi Kumar
Resident of: Kumar Mohalla, Chrar-i-Sharief, Budgam District

Alleged Perpetrators

1. Umair Singh, Deputy Commandant, 181st Battalion, Central Reserve Police Force [CRPF], Trajbal Camp
2. Ujala Singh, Sub-Inspector, Post Commander, 181st Battalion, Central Reserve Police Force [CRPF], Trajbal Camp

Case Information

On 13 September 2010, as part of his daily routine, Danish Nabi Kumar came home, had his lunch, and later returned to school. On the same day, there were mass protests by the youth due to the burning of the Quran. Danish Nabi Kumar did not return from school. His father panicked and started looking for him. After an hour, a relative Bashir received a phone call from the hospital. Danish Nabi Kumar's father rushed to hospital and found his son dead. The family did not file an FIR.

After a month, the Deputy Commissioner [DC] of Budgam, Rafiq, visited Danish Nabi's family to deliver a cheque of Rs. 500000. Although, it was announced by the government and also televised that the families of those martyred during the 2010 protests would receive employment under SRO 43, the victim's family did not receive any such facility.

The mother of the victim, Razia Kumar, gave the above statement to the IPTK on 25 March 2015.

On record is FIR no. 157/2010 at Police Station Chrar-i-Sharief where the alleged perpetrator, filing the FIR, states that at about 3:30 pm on 13 September 2010, Danish Nabi Kumar was a part of an unlawful assembly that was armed with stones and sticks and attacked the CRPF camp at Trajbal. Post Commander Ujala Singh fired shots in the air. But when the rioters continued to attack, "to protect the weapon and human life the post commander fired at the rioters aiming below the belt". As a result four rioters were injured and the mob dispersed quietly. Five CRPF personnel sustained injury. Further information on this FIR was sought through RTI dated 15 July 2015.

Also on record is a Death Certificate, dated 23 September 2010, that states that the victim was brought dead to the hospital on 13 September 2010. The "wound of entry was on left side of chest".

This case is also before the Justice Koul Commission set up to enquire into the killings of 2010. On record are objections filed by the Station House Officer, Chrar-i-Sharief before the Commission dated 27 January 2015 where it is stated that investigations were closed with a chargesheet filed against six persons including the deceased victim. The chargesheet was filed on 28 March 2012.

By judgment dated 27 February 2015 the case against the six accused persons was dismissed by the Court of Principal Sessions Judge, Budgam. The prosecution examined only two witness. Alleged perpetrator no.1 was examined and he stated that he was informed on the phone by alleged perpetrator no.2 that the post had been cordoned by people. He was based at the Battalion Headquarters. The civilian witness examined confirms that there was a procession but he does not confirm the presence of the accused persons in the procession. The court found that the guilt of the accused had not been proved.

Both the alleged perpetrators stand indicted in this case. Alleged perpetrator no.2 fired at the procession and this led to the death of the victim. This is not disputed by either party. The death certificate contradicts the claim that the firing was done below the belt. Therefore, prima facie evidence indicts alleged perpetrator no.2. Alleged perpetrator no.1 does not appear to have been at the scene of the crime. But, he was kept informed and he chose to file the FIR – which led to a baseless chargesheet including against the victim himself. Under international criminal law principles, alleged perpetrator no.1 must be held accountable for the actions of those under his effective control.

Case No. 192

Victim Details

1. Umar Sheikh Suleiman [Extra-Judicial Killing]
Age: 15
Son of: Mohammad Suleiman Sheikh [deceased]
Resident of: Narji, Potukhah, Sopore, Baramulla District
2. Mohammad Rafiq Hajam [Injuries]
Age: 19
Son of: Ghulam Mohammad
Resident of: Potukhah, Sopore, Baramulla District
3. Mohammad Ashiq Ahangar [Injuries]
Age: 24
Son of: Abdul Rahim
Resident of: Potukhah, Sopore, Baramulla District
4. Nika [Injuries]
Son of: Ghulam Mohammad Malik
Resident of: Potukhah, Sopore, Baramulla District

Alleged Perpetrators

1. Major Rawat [Operational name: Rasheed Khan], 52 Rashtriya Rifles [RR], Army, Camp Choora, Potukhah

Case Information

On 16 September 2010 at 7:00 pm personnel of the 52 RR opened fire on a group of protestors protesting against the thrashing of people on that day by the Major Rawat. Major Rawat led the personnel that opened the firing, which resulted in injuring Umar Sheikh Suleiman, Mohammad Rafiq Hajam, Mohammad Ashiq Ahangar and Nika. Umar Sheikh Suliaman succumbed to bullet injuries on 1 October

2010.

First Information Report [FIR] no. 488/2010 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Sopore Police Station on 16 September 2010 and carries the version of events as provided by the 52 RR¹⁸⁸. The FIR states that two persons on a two wheeler were asked to stop, but they did not, and instead they opened fire on the army party resulting in injury to one soldier. Following the filing of the case, the family of the victim has been harassed by Major Rawat.

The family of Umar Sheikh Suleiman received Rs.5,00,000 from the Deputy Commissioner, Baramulla.

The family of Umar Sheikh Suleiman gave a statement to the IPTK on 15 December 2011.

The Jammu and Kashmir Police closed investigations, despite credible evidence against the alleged perpetrator, and neither did the army by itself carry out a court-martial against accused army personnel.

Case No. 193

Victim Details

Mohammad Ashraf Lone [Abduction, Torture and Extra-Judicial Killing]
Age: 30
Occupation: Imam, Village Mosque
Son of: Ghulam Rasool Lone
Resident of: Chethpoora, Rohama, Rafiabab, Baramulla District

Alleged Perpetrators

1. Gazanfar Ali [Operational name: Chulbul Pandey], Station House Officer [SHO], Sopore Police Station, Jammu and Kashmir Police
2. Abdul Ahad Sheikh [Operational name: Chottu], Special Operations Group [SOG], Jammu and Kashmir Police, Sopore
3. Mohammad Shafi, Special Operations Group [SOG], Jammu and Kashmir Police, Sopore

Case Information

On 24 April 2011, Mohammad Ashraf Lone was shot dead by unknown gunmen in Kreeri, Baramulla district.

¹⁸⁸ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further, in response to a statement by the Government of Jammu and Kashmir on 5 March 2012 that over the last three years, 444 FIR's had been filed against the security forces and the police, a RTI was filed seeking information on these cases. On 19 May 2012 while information was provided on nine FIR's filed in Sopore Police Station against the armed forces and the Jammu and Kashmir Police, FIR no.488/2010 does not find a mention. Further information sought through RTI on 15 October 2013. By communication dated 9 January 2014 a copy of the FIR and closure report was provided and it was stated that the case was closed by declaring the perpetrators as untraced on 24 October 2012.

Mohammad Ashraf Lone was abducted from Sopore town where he had gone to make an appointment with a doctor for his daughter. According to eye-witnesses in Sopore market, he was caught by three persons and was bundled into a Sumo vehicle.

The family of Mohammad Ashraf Lone states that he was taken to the Ningli stream at Chooru, Sopore where he was tortured and beaten. An old person passing by stopped and asked why he was being tortured. He was informed that Mohammad Ashraf Lone was a militant and that an ammunition dump had been recovered from him.

Subsequently, Mohammad Ashraf Lone was taken to Kreeri, Baramulla District. He was taken towards Hael village and shot dead.

The family of Mohammad Ashraf Lone states that in the month of December 2010 the victim was called to the Sopore Police Station by SHO Gazanfar Ali. Mohammad Ashraf Lone was asked to work as an informer but he refused. He was then told to quit his job in *Darul-uloom*. To save his life, he left the *Darul-uloom*. Even prior to this visit Mohammad Ashraf Lone had been harassed by SHO Gazanfar Ali.

Mohammad Ashraf Lone was also friends with Abdul Ahad Sheik and Mohammad Shafi. When Mohammad Ashraf Lone was taken to the police station to meet with SHO Gazanfar Ali, Abdul Ahad Sheik was the one who took him there.

Following Mohammad Ashraf Lone's refusal to be an informer, he disassociated himself from Abdul Ahad Sheik.

The family of Mohammad Ashraf Lone believes that Abdul Ahad Sheik and Mohammad Shafi were also behind the killing of the victim.

Around a month after the death of Mohammad Ashraf Lone, Abdul Ahad Sheik called Shameema, the wife of the victim, and told her that she need not to repent over the victim's death, that he was a liar and this was the reason for his killing. He also told Shameema to meet him at Sopore, which she refused by stating that he would kill her too. Abdul Ahad Sheik also called the Mohammad Ashraf Lone's cousin, Yasir Arafat, to meet with him but Yasir Arafat's family did not allow him to do so.

First Information Report [FIR] no. 24/2011 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition / possession / manufacture / sale of prohibited arms / ammunition] / 27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 was

filed at the Kreeri Police Station¹⁸⁹.

Further information sought through RTI dated 14 November 2014.

By communication dated 6 January 2015 some investigation documents were provided, thereby suggesting that investigations are ongoing. The postmortem of the victim was also provided that found death by bullet injury. But, no information exists on whether any investigations were finalised or prosecutions were conducted by the Jammu and Kashmir Police in this case.

Case No. 194

Victim Details

Rashida Bano [Extra-judicial killing]

Age: 24

Daughter of: Abdul Rafiq Rather

Resident of: Bhalessa, Doda District

Alleged Perpetrators

1. Assistant Sub-Inspector [ASI] Mumtaz Hussain, In-charge Police Post `1, Jammu and Kashmir Police

Case Information

On 29 May 2011, Rashida Bano jumped into a river after she was harassed by ASI Mumtaz Hussain while she was talking to a male classmate.

First Information Report [FIR] no. 123/2011 u/s 306 Ranbir Penal Code, 1989 [RPC] was filed at the Doda Police Station¹⁹⁰.

The 15 June 2012 communication from the Jammu and Kashmir Police states that the case was chargesheeted and under trial.

The SHRC took cognizance of the matter¹⁹¹.

Case No. 195

Victim Details

Junaid Ahmad Khuroo [Extra-Judicial Killing]

Age: 20

Occupation: 10th Standard student and worked in a clinic

Son of: Abdul Qayoom Khuroo

Resident of: Kralteng Sopore, Baramulla District

Alleged Perpetrators

1. Gazanfar Ali [Operational name: Chulbul Pandey], Station House Officer [SHO],

189 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013.

190 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 15 June 2012 from the Jammu and Kashmir Police a copy of the FIR and chargesheet were provided.

191 Rising Kashmir, <http://m.risingkashmir.com/news/shrc-seeks-report-from-police-over-students-suicide-10634.aspx>, 2 June 2011.

- Sopore Police Station
2. Sub-Inspector [SI] Badloo Ram, 179th Battalion Central Reserve Police Force [CRPF]

Case Information

On 24 June 2011, SHO Gazanfar Ali questioned Junaid Khuroo on his role during the 2010 protests. Junaid Khuroo confirmed he had taken part in the agitation. Junaid Khuroo was released after five hours of questioning.

On 29 June 2011, Junaid Khuroo left for his school to collect the roll number slip for the exam. On his way, Junaid Khuroo was seen by a shopkeeper named Bilal Ahmad at Iqbal Market, Sopore. Subsequently, at about 10:45 am there was firing at the Gul Abad locality of Arampora, Sopore. Junaid Khuroo was found dead and at 1:00 pm his father identified his body at the police station.

Police claimed that Junaid Khuroo was chased by personnel of the 179th Battalion CRPF, led by Sub-Inspector Badloo Ram, after Junaid Khuroo had fired on their bunker. Police said Junaid Khuroo took refuge in a local mosque where he shot himself dead with a pistol he was carrying with him. The father of Junaid Khuroo denies this claim and states that Junaid Khuroo must have been tortured to death by Gazanfar Ali and then his body would have been placed at the mosque.

The family of Junaid Khuroo gave a statement to the IPTK on 8 March 2012.

First Information Report [FIR] no.178/2011 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition / possession / manufacture / sale of prohibited arms/ammunition] / 27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 was filed at the Sopore Police Station on 29 June 2001. This FIR was filed by the police and has their version of events.¹⁹²

The family of Junaid Khuroo filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 981/2011] seeking investigations into the killing of Junaid Khuroo. A compliance report of 18 October 2011 states that the police have accepted the version of the deceased being a militant and shooting himself and a final report is to be filed in the court. A status report, of 14 September 2011 confirms the same details but also adds that a pistol magazine was also recovered from the site. The case remains pending in the High Court.

The family of Junaid Khuroo also approached the

State Human Rights Commission [SHRC]. On 29 November 2011 the Director General of Police [DGP], Jammu and Kashmir stated that the investigation was ongoing, but it had been learnt from reliable sources that Junaid Khuroo was a militant, had fired upon the CRPF bunker, and had then committed suicide.

On 13 June 2012, the Deputy Commissioner, Baramulla took a similar position before the SHRC. The matter remains pending.

An application through the Jammu and Kashmir Right to Information Act, 2009 [RTI] with specific questions on this case was filed on 31 March 2012. By communication dated 5 June 2012 from the Jammu and Kashmir Police the following information was provided:

- The investigation in the case was ongoing. This information contradicts the earlier position that the investigations in the case were closed.
- The operation conducted on the date of the event was not a joint operation between the CRPF and the police.
- During the firing that took place on the day of the incident which led to Junaid Khuroo being chased, no property was damaged.
- The following arms and ammunition were seized from "Tameer Ahmad Khuroo @ Junaid": Pistol Chinese 1, P.Magz 1, live cartridge pistol 1, empty cartridge pistol 3.
- Further details on the incident itself were provided which were a repetition of the earlier stated position of the police.
- Statements of locals and CRPF personnel during investigation were not provided "from a security point of view" and section 9 of the RTI Act [a section which would not be relevant in the instant case as it relates to copyright infringement] was referred to.

The information provided raises questions. First, the position that investigations are ongoing contradicts with the position taken in the High Court that a final report in the case was to be filed. The fact that no property was damaged during the firing on the day of the incident raises questions on the police version of events. It would appear unlikely that no property was damaged. It is also most unfortunate that the statements recorded during investigations are not being provided from a security point of view. These statements could assist in correctly evaluating the case.

Finally, of interest is the medical report of the Medical Officer, Sub-District Hospital Sopore which states that Junaid Khuroo was shot on the "Left side Parietal region". The family of Junaid Khuroo states that he was right-handed. If Junaid Khuroo was right-handed

¹⁹² Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. By communication dated 9 January 2014 from the Jammu and Kashmir Police a copy of the FIR was provided and it was stated that the case was "under investigation".

it is highly unlikely that he would have shot himself on the left side of his head. This strongly suggests that the police version of events is wrong and Junaid Khuroo did not commit suicide.

Case No. 196

Victim Details

Nazim Rashid Shalla [Abduction, Wrongful Confinement, Torture and Extra-Judicial Killing (Custodial Killing)]

Age: 28

Son of: Abdul Rashid Shalla [retired police officer]

Resident of: Alamdar Mohalla, Sopore, Baramulla District

Alleged Perpetrators

1. Head Constable Janak Raj, Jammu and Kashmir Police
2. Selection Grade Constable Nissar Ahmad Malik, Jammu and Kashmir Police
3. Selection Grade Constable Mohammad Abass Palla, Jammu and Kashmir Police
4. Deputy Superintendent of Police [DSP] Ashiq Hussain Tak, Special Operations Group [SOG], Jammu and Kashmir Police
5. Superintendent of Police [SP] Altaf Ahmad Khan, Jammu and Kashmir Police

Case Information

On 31 July 2011, Nazim Rashid Shalla died in police custody in Sopore, due to torture, following being picked up by a joint group of the SOG and the army.

On 30 July 2011, at about 2:30 pm, a joint party of SOG and army came to the Nazim Rashid Shalla's shop and asked him to accompany them. The army personnel were headed by a Major from the Industrial Estate Camp, Sopore. Subsequently, two hours after Nazim Rashid Shalla had been taken, his father received a phone call from the same Major who informed him that Nazim Rashid Shalla had been found innocent and that the SOG, Sopore took him for further questioning. At 8:00 pm, the father of Nazim Rashid Shalla received a call from the SOG, Sopore, who asked him to talk to Nazim Rashid Shalla. Nazim Rashid Shalla told his father to get certain SIM cards and cell phones from his shop to the SOG Camp at the Town Hall, Sopore. The SOG informed the father of the victim that if he wanted his son alive he would do as he was told. On reaching the agreed location the SOG snatched the cell phones from the father of Nazim Rashid Shalla at the gate and asked him to return home.

At about 9:30 pm the father of the victim received another phone call. Nazim Rashid Shalla told his father that he had been badly tortured and needed medication. The father of Nazim Rashid Shalla went to SOG Camp at about 10:00 pm and managed to enter into the Town Hall Camp. He saw Nazim Rashid Shalla

on the floor in the DSP's official chamber. Some SOG personnel were beating him and he was almost in an unconscious state. The father of Nazim Rashid Shalla was then thrown out of the camp. Subsequently, on the next day, the father of Nazim Rashid Shalla heard that the victim had died.

First Information Report [FIR] No. 202 /2011 u/s 302 [Murder], 201 [Causing disappearance of evidence/giving false information] Ranbir Penal Code, 1989 [RPC] was filed at the Sopore Police Station. A Special Investigating Team was constituted for the investigations. Head Constable Janak Raj, Senior Grade Constable Nissar Ahmad Malik and Senior Grade Constable Mohammad Abass Palla have been arrested. DSP Ashiq Hussain Tak was attached in the case and SP Altaf Ahmad Khan was transferred.

The Government of Jammu and Kashmir appointed a Commission headed by the Deputy Commissioner [DC], Baramulla to enquire into the killing of Nazim Rashid Shalla.

It appears that Nazim Rashid Shalla had been arrested in relation to FIR no. 9/2011 u/s 302 [Murder] Ranbir Penal Code, 1989 [RPC] and 7 [Prohibition of acquisition / possession / manufacture / sale of prohibited arms / ammunition] / 27 [Punishment for possessing arms etc. with intent to use them for unlawful purpose] Arms Act, 1959 filed at the Tarzoo Police Station. The FIR relates to the killing of a person named Mohammad Ashraf Dar, son of Ghulam Mohammad Dar. It does not refer to the victim. This incident is said to have taken place on 8 August 2011.

On 26 January 2012, DSP Ashiq Hussain Tak and SP Altaf Ahmad Khan were awarded gallantry awards. Further, alleged perpetrator Altaf Ahmad Khan has been awarded the Director General of Police's Commendation Medal for 2010, and more recently a Presidents Police Award for Gallantry on 15 August 2012.

Information on both FIR's was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further, another RTI was filed with specific questions on the case on 4 August 2011. A copy of FIR no.9/2011 was provided. Further, information was provided by communication dated 3 February 2012 from the Jammu and Kashmir Police. Information was as follows [relevant portions are provided below]:

- Nazim Rashid Shalla was arrested by DSP Operations Sopore on 30 July 2011 at about 2:30 pm and was questioned by the DSP.
- Nazim Rashid Shalla was detained in Police Component, Sopore
- The "home people" of Nazim Rashid Shalla were informed
- Nazim Rashid Shalla was found dead on 31 July 2011 at about 7:00 am
- The Block Medical Officer, Sopore declared

Nazim Rashid Shalla dead

- Nazim Rashid Shalla had complained of shoulder pain and also when he was asked for medical treatment he replied that he had already taken medicine which had been prescribed by Dr. Sushil Razdan, Neurologist.
- The post-mortem was conducted by Dr. Zubair and Dr. Shakeel of Sub-District Hospital, Sopore. Mohammad Ahsan Mir, Sub-District Magistrate, Sopore was present.
- Head Constable Janak Raj, Senior Grade Constable Nissar Ahmad Malik and Senior Grade Constable Mohammad Abass Palla had been chargesheeted in FIR no.202/2011.

ARTI was filed on 18 December 2012 to Jammu and Kashmir Police regarding custodial killings in Jammu and Kashmir between 1989 and 2012. By communication dated 13 March 2013, a copy of the FIR and chargesheet was provided.

Further information from RTI was sought on FIR no. 202/2011 and 9/2011 on 15 October 2013. By communication dated 9 January 2014 from the Jammu and Kashmir Police a copy of FIR no. 9/2011 was provided and it was stated that the case was chargesheeted on 9 August 2012. A copy of the chargesheet was provided. The sister of Mohammad Ashraf Dar gave a statement to the police that she suspected the hand of the victim in the killing of her brother. Bilal Ahmad Dar is listed as the main accused in the case. Further information on FIR no. 202/2011 was sought through RTI dated 14 November 2014. Further information on FIR no. 9/2011 was sought through RTI dated 14 November 2014. On FIR 202/2011 by communication 5 January 2015 from the Jammu and Kashmir Police a copy of the FIR and chargesheet were provided.

While three of the alleged perpetrators have been made subject to a court process [though it is uncertain if they remain detained and what happened in the government run prosecution], no action appears to have been taken by the Jammu and Kashmir Police against DSP Ashiq Hussain Tak and SP Altaf Ahmad Khan. This requires to be investigated. On the contrary, these two alleged perpetrators recently received gallantry awards, a shameful indictment of the processes of justice in Jammu and Kashmir.

Case No. 197

Victim Details

Hilal Ahmad Dar [Extra-judicial killing]
Occupation: Employee, Khyber Cement Factory
Son of: Ghulam Mohi-ud-Din Dar
Resident of: Lahipora, Aloosa Tehsil, Bandipora district

Alleged Perpetrators

1. Unidentified personnel of the 27 Rashtriya Rifles [RR] [Maratha Light Infantry], camped at Paribal
2. Nazir Ahmad Bhat, son of Mohammad Maqbool Bhat, resident of Aloosa Tehsil, Bandipora district, Informer, 27 Rashtriya Rifles [RR] [Maratha Light Infantry]
3. Rameez Ahmad Dar, alias Mohammad Ramzan, son of Abdul Aziz Dar, resident of Aloosa Tehsil, Bandipora district, Informer, 27 Rashtriya Rifles [RR] [Maratha Light Infantry]

Case Information

On the intervening night of 24/25 July 2012, the alleged perpetrators killed the victim.

First Information Report [FIR] no.143/2012 under section 307 [attempt to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Bandipora Police Station based on information provided by the army.¹⁹³

Details on this FIR were not provided by the Jammu and Kashmir Police but a magisterial enquiry conducted [detailed below] states the following with regard to the FIR. The FIR was registered to the effect that on the intervening night of 24/25 July 2012, an ambush party of 27 RR camped at Paribal, Aloosa, was fired upon and the army retaliated. One person was killed, i.e. the victim, due to bullet injuries following the firing. 27 RR [Maratha Light Infantry], in a letter addressed to Station House Officer [SHO], Bandipora for lodging of FIR, stated that the army had received information regarding presence of "two to three terrorists" west of Aloosa village and then launched surveillance cum ambush in the area. The ambush party observed movement of two suspicious persons at 23:45 pm on top of Halmatpora hillock. Then, the army, upon being challenged, fired back and the body of the victim was found.

In response to a separate RTI application filed on 25 June 2014 to the Home Department regarding internal proceedings, including court-martials, conducted by armed forces, by communication dated 21 August 2014, the Jammu and Kashmir Police provided information on this case. It appears that the police mistook internal proceedings by the armed forces to include the magisterial enquiry conducted in this case. Information provided was that FIR no. 143/2012 was filed under section 302 [Murder], 34 [Common intention] RPC and sections 7, 27 Arms Act. This contradicts the magisterial enquiry that only

¹⁹³ Information was sought through RTI dated 14 November 2014. No information was provided.

refers to Section 307 RPC on the FIR. Further, it is stated that the enquiry report was forwarded to the "Hon'ble Court".

District Magistrate, Bandipora, vide order dated 25 July 2012, appointed Additional District Magistrate, Bandipora, to carry out an enquiry. An undated, but signed, magisterial enquiry report is available on record. 19 witnesses deposed and their statements were recorded. The enquiry report adds that "Besides, two persons namely Nazir Ahmad Bhat, son of Mohammad Maqbool Bhat, and Rameez Ahmad Dar alias Mohammad Ramzan, son of Abdul Aziz Dar, both residents of Aloosa, Bandipora, accused under Section 302 RPC and case challaned in the court of Chief Judicial Magistrate Bandipora, were also cross examined during the investigation". The enquiry report also states that the army's 27 RR unit camped at Paribal did not initially cooperate in the enquiry but eventually the adjutant of 27 RR presented himself before the enquiry and submitted a notarized affidavit regarding the incident that led to the killing of the victim. Further, the following documents were also perused by the Additional District Magistrate during the enquiry: FIR lodged by the army, post mortem report of the victim, phone call details of the victim and alleged perpetrators 2 and 3, copy of chargesheet, Forensic Science Laboratory [FSL] reports etc.

The magisterial enquiry concluded by finding that the victim was not a militant, could not have possessed or fired a weapon on the army, and that alleged perpetrators 2 and 3, in a "well thought out and calibrated plan / strategy motivated the deceased Hilal Ahmad Dar to accompany them and join a religious meeting [Deeni-Ijtima] of Tableeghi Jamaat at Binlipora/Halmatpora to which he gladly agreed given his inclination towards the Jamaat and eventually leading him to a place in Halmatpora where the ambush was laid by the army on the information provided by both of them to army 27 RR Unit in advance and **getting their plan executed by eliminating Hilal Ahmad Dar through army**" [emphasis added].

Before considering the magisterial enquiry report in greater detail, it is uncertain what the exact status of the FIR no. 143/2012 is. The enquiry report states that alleged perpetrators 2 and 3 stand accused for murder in a challan filed before the Chief Judicial Magistrate, Bandipora. RTI response dated 21 August 2014 confirms that this challan is regarding the murder of the victim, but the present status of the case is unknown. The enquiry report may now be analyzed.

The following evidence was presented before the Additional District Magistrate:

- Adjutant, 27 RR, submitted a notarized affidavit. The Adjutant also stated about the Standard Operating Procedure that the rules of engagement and challenging procedure were followed during the operation. The

enquiry report states "When asked whether the deceased Hilal Ahmad Dar was listed with them as a militant, the officer was unconvincing in his reply". The enquiry report further states that the victim "was not listed as a militant, a supporter of a militant and not even as an anti-social element in police records".

- The post mortem report of the victims body states cause of death to be massive hemorrhage secondary to multiple gunshot injuries [one just below left cleical, and another in the abdominal region] leading to Hypovolumin shock, cardio respiratory arrest and then death.
- The FSL reports from the FSL, Srinagar, dated 11 August 2012, state that the AK-47 rifle marked as exhibit no. B-539/12, allegedly recovered from the incident site, was found to be in working condition with the pistol grip in broken condition and the rifle had been fired from. However, the finger print swabs/slips of the victim dispatched for forensic examination were not discerned on the exhibit [rifle], as the exhibit had "not been properly packed in the opinion of forensic experts".
- "Almost all the persons who attended" the enquiry in connection with recording their statements, stated in unequivocal terms that the deceased Hilal Ahmad Dar was a pious Muslim, inclined towards Tableeghi Jamaat and was not having any link or inclination towards any militant organization directly or indirectly. The witnesses stated that the army killed the victim, as alleged perpetrators 2 and 3, both informers of the army, hatched a conspiracy against him. According to the witnesses, the motive could have been the monetary rewards they might have expected to receive from the army in lieu of providing false information to the army regarding involvement of Hilal Ahmad Dar in militancy related activities.
- As per the statement of the family members of the deceased, on 24 July 2012, the victim was pruning trees in his courtyard when he received a phone call from Nazir Ahmad Bhat. Immediately after the call, the victim told his family that he had to attend a Deeni-Ijtima [a religious meet] at Binlipora/Halmatpora, as conveyed to him by Nazir Ahmad Bhat on the phone.
- "Some of the witnesses" stated that some people hailing from Ganaie Mohalla, Aloosa testified that they saw the victim accompanied by Nazir Ahmad Bhat on the evening of 24 July 2012 proceeding towards a Deeni-Ijtima.
- Witnesses as also the family members of the victim stated that alleged perpetrators 2 and 3 hatched a conspiracy to kill the victim by providing information to the army about militants in the area.
- During cross-examination, Nazir Ahmad Bhat

stated that he knew the victim and that he was working in a cement factory in Srinagar and had no involvement whatsoever with any militant organization and that the army killed him. He denied being involved in the killing though he admitted that he had requested the victim to accompany him for a Deeni-Ijtima at Binlipora. Rameez Ahmad Dar had conveyed this information, regarding the Deeni-Ijtima, to him. He further stated that Rameez Ahmad Dar contacted the victim on phone late on 24 July 2012, when he and the victim were together, and asked the victim to wait for him for some time. At about 22:00 pm, he and the victim realized that the army had laid a cordon around them and that "Rameez Dar had callously lead them in a trap with intention to kill both of them and label them as terrorists". But, the enquiry report notes, that Nazir Ahmad Bhat was unable to give any convincing reply to the question of how he was able to escape unhurt while the victim was killed.

- Rameez Ahmad Dar stated that the victim was not involved in any manner with militancy related activities. He denied any role in the killing of the victim, or of being a source for the army but he admitted that he "was having some liaison with local army unit, being the ex-militant". But, the enquiry report notes that, the Adjutant, 27 RR in his reply to a questionnaire to the SHO, Bandipora, admitted that Rameez Ahmad Dar was working the army as a source "**which is further corroborated from the phone call details obtained from the concerned service providers**" [emphasis added].

Additional District Magistrate, Bandipora concluded the report by stating that there was no controversy as to who killed the victim. Both in the FIR, and before the magisterial enquiry, the 27 RR confirmed that their personnel killed the victim. The witness testimony confirmed that the victim was not involved in any militancy related activities. The police records also confirmed this. The enquiry report also noted that there is no evidence of the victim being seen in the evening of 24 July 2012 with a weapon. The FSL report also does not implicate the victim. The enquiry, on this point, concludes that "It does not seem plausible to believe that a person who has never been spotted to have held a weapon in his hand would have the capability to acquire a weapon on the day of incident and fired from it that too when the pistol grip of the weapon was in a broken condition as per the FSL report". The enquiry report concludes by implicating alleged perpetrators 2 and 3 in the murder of the victim through the army.

As stated by the enquiry, it is admitted the personnel of the 27 RR [Maratha Light Infantry] killed the victim. Further, the witnesses confirm that the victim was not

a militant, or involved in militant related activities. Further, it appears from the enquiry report, that the army has not placed any evidence on record regarding the source of their information that there were militants in the area. Further, the FSL report, and the fact that the rifle had a broken pistol grip, completely debunks the army theory on their being firing for which they had to retaliate. The role of alleged perpetrators 2 and 3 also seems made out. Alleged perpetrator 2 implicates alleged perpetrator 3, and alleged perpetrator 2 is unable to explain his escape, thereby implicating himself in the conspiracy. The other witnesses too seem to implicate alleged perpetrators 2 and 3. **But, it is unfortunate that the Additional District Magistrate chose to focus on alleged perpetrators 2 and 3 and there was no unequivocal indictment of the 27 RR personnel – who must be held primarily responsible for the extra-judicial execution of the victim. The role of alleged perpetrators 2 and 3 appear secondary in the instant circumstances.**

While no information exists on the prosecution of alleged perpetrators 2 and 3, there appears to be absolute impunity for the 27 RR as no information exists on whether sanction for prosecution under AFSPA was sought/granted or whether any court-martial proceedings were carried out by the army. It also needs to be ascertained before which court the instant case was litigated.

Case No. 198

Victim Details

Irshad Ahmad Ganie [Extra-judicial killing]
Son of: Ghulam Nabi Ganie
Resident of: Markundal, Bandipora District

Alleged Perpetrators

1. Personnel of 13 Rashtriya Rifles [RR], Manasbal camp
2. Manzoor Ahmad Sheikh, son of Abdul Rashid Sheikh, Army source

Case Information

On the 30 June 2013 in the early morning hours a patrolling part of 13 RR accompanied by their source Manzoor Ahmad Sheikh was in Markundal village, Bandipora. They shot and killed the victim.

First Information Report [FIR] no. 115/2013 under section 302 [murder] Rabir Penal Code [RPC] was filed at the Sumbal Police Station. Investigations led to a chargesheet on 5 October 2013 against alleged perpetrator no.2 but investigations against the personnel of 13 RR are pending due to non-cooperation of the army.

By communication dated 21 May 2015, the Senior

Superintendent of Police [SSP], Bandipora informed the Public Prosecutor Sessions Court Bandipora that the role of the army was being investigated separately. Further, that several correspondences had been made with 13 RR to furnish the nominal roll of the army personnel detailed for patrolling on the day of the incident. But, to date, there had been no response.

Against the non-cooperation of the army, the family of the victim filed a writ petition – OWP 1312/2015 before the Jammu and Kashmir High Court seeking that the court mandate the army to cooperate with the investigations. Notices have been issued by the court. The petition remains pending.

The above case is a clear example of the manner in which the army seeks to protect itself from any accountability in Jammu and Kashmir. There is no legal basis for the army to not cooperate with the investigations. Further, while a civilian source is being prosecuted, the persons primarily responsible – the army – for the crime are presently not even allowing themselves to be subject o investigations.

SEXUAL VIOLENCE

Rape: a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. The central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts.

[Prosecutor v. Jean Paul Akayesu, Trial Judgment, 2 September 1998, UN International Criminal Tribunal for Rwanda]

This Sub Chapter has 13Case Studies



PART D: SEXUAL VIOLENCE

Case No. 1

Victim Details

Over 40 women raped and numerous men tortured
[Rape, Torture]
Resident of Kunan Poshpora, Kupwara District

Alleged Perpetrators

[This information is based on a Nominal Roll provided during investigations of the party involved in the Operation. All are from 4th Rajputana Rifles. The italicized part next to each name is from notations on the Nominal Roll that appear to indicate the Company within the Battalion that the individual belongs to or that the person is based at the Battalion Headquarters]

1. Colonel K.S Dalal
2. Major R Khullar
3. Major M.K Mathur
4. Major H.S Jatrana
5. Major A.K Mathur
6. Captain Ranjan Mahajan
7. 2nd Lieutenant Raghuraj Singh
8. 2nd Lieutenant Saju Mathew
9. Captain O.S Shyam Sunder
10. Subedar Daya Ram B
11. Subedar Daya Ram C
12. Subedar Laxman Singh D
13. Subedar Ram Chander Singh D
14. Naib Subedar Sukhi Ram B
15. Naib Subedar Tej Pal Singh A
16. Naib Subedar Pep Singh A
17. Naib Subedar Mool Chand Punia HQ
18. Naib Subedar Hakikat Rai C
19. Havaladar Inder Singh A
20. Havaladar Lal Singh A
21. Havaladar Yadunath Singh A
22. Havaladar Mohan Singh A
23. Havaladar Shish Ram B
24. Havaladar Dharambir Singh B
25. Havaladar Sant Ram B
26. Havaladar Dev Karan Singh B
27. Havaladar Dharambir Singh B
28. Havaladar Satya Narayan B
29. Havaladar Mansa Ram C
30. Havaladar Mahabir Singh C
31. Havaladar Bhagat Singh C
32. Havaladar Daya Singh C
33. Havaladar Dalel Singh C
34. Havaladar Moti Singh D
35. Havaladar Harender Singh D
36. Havaladar Tahsheldar Singh D
37. Havaladar Pratap Singh HQ
38. Havaladar Indraj Singh HQ
39. Havaladar K.S Ratiala HQ
40. Havaladar Tej Pal Singh B
41. Havaladar Deep Chand C
42. Lance Havaladar Pyare Lal C
43. Lance Havaladar Laxman Singh D

44. Lance Havaladar Bir Singh B
45. Havaladar Balbir Singh B
46. Naik Hari Singh B
47. Naik Ran Singh B
48. Naik Karambir Singh B
49. Naik Chandan Singh B
50. Naik Ramesh Chander B
51. Naik Satbir Singh B
52. Naik Hanumana Ram B
53. Naik Rajender Singh B
54. Naik Rajender Singh C
55. Naik Bijender Singh C
56. Naik Ajit Singh C
57. Naik Birpal Singh C
58. Naik Chandgi Ram C
59. Naik Soni Singh D
60. Naik Narayan Singh D
61. Naik Rajender Singh D
62. Naik Inderjeet Singh D
63. Narender Singh D
64. Naik Ramesh Singh HQ
65. Naik Bhura Ram B
66. Naik Daya Chand HQ
67. Naik Ghanshyam Singh HQ
68. Naik Mahabir Singh HQ
69. Naik Subhash Chander HQ
70. Naik Rameshwar Singh HQ
71. Naik Sumer Singh A
72. Naik Indal Singh A
73. Naik Chhabil Dass A
74. Lance Naik Radheshyam Singh A
75. Lance Naik Hawa Singh B
76. Lance Naik Balwan Singh B
77. Lance Naik Rakesh Kumar B
78. Lance Naik Dharambir Singh B
79. Lance Naik Sini Ram B
80. Lance Naik Om Prakash C
81. Lance Naik Puram Singh D
82. Lance Naik Nathu Singh D
83. Lance Naik Santosh Singh D
84. Lance Naik Bhanwar Singh D
85. Lance Naik Partap Singh HQ
86. Lance Naik Rohtash Singh HQ
87. Lance Naik Hanuman Lal HQ
88. Lance Naik Tirath Singh D
89. Lance Naik Bhim Singh D
90. Lance Naik Vijay Pal Singh A
91. Havaladar Ritash Singh A
92. Rifleman Bhik Chand A
93. Rifleman Kok Singh A
94. Rifleman Gyan Singh A
95. Rifleman Shiv Narayan A
96. Rifleman Jagdish Prasad B
97. Rifleman Rajender Singh B
98. Rifleman Azad Singh B
99. Rifleman Sumer Singh C
100. Rifleman Rajender Singh C
101. Rifleman Parsha Ram C
102. Rifleman Vinod Kumar C
103. Rifleman Rajbir Singh C
104. Rifleman Bijender Singh C
105. Rifleman Satyawan Singh C
106. Rifleman Ajmer Singh C

107. Rifleman Mahesh Singh *D*
108. Rifleman Rambir Singh *D*
109. Rifleman Amir Singh *D*
110. Rifleman Ashok Kumar *D*
111. Rifleman Denash Kumar *D*
112. Rifleman Mangu Singh *D*
113. Rifleman Devender Nath Singh *D*
114. Rifleman Rambir Singh *D*
115. Rifleman Surender Singh *D*
116. Rifleman Vedpal Singh *D*
117. Rifleman Rathoswa Singh *D*
118. Rifleman Sushil Kumar *D*
119. Rifleman Gayan Singh *D*
120. Rifleman Tulishi Ram *HQ*
121. Rifleman Bhawani Singh *HQ*
122. Rifleman Sunder Singh *HQ*
123. Rifleman Vishwas Singh *HQ*
124. Rifleman Vijay Singh *D*
125. Rifleman Harnam Singh *D*

Case Information

23/24 February 1991.

Read Chapter 2: Theatres' of Violence-Part A relating to the mass violence at Kunan Poshpora.

Case No. 2

Victim Details

[Name and identifying information withheld] [Rape, Torture, Extra-judicial killing]
Resident of: Bandipora

Brother of victim [Name and identifying information withheld] [Extra-judicial killing]
Resident of: Bandipora

Alleged Perpetrators

1. Abdul Rashid Pahloo, Commander, Government Gunman [Ikhwan]
2. Bashir Ahmad Rather, alias Chengez, Government Gunman [Ikhwan]

Case Information

In the year 1992, the victim was repeatedly raped by Ikhwani Abdul Rashid Pahloo.

Rashid Pahloo, an Ikhwan group commander, managed his entry inside the victim's house through Mohammed Akbar Hajam. Akbar Hajam's younger brother Muzaffar was working with Ikhwani's owing to which he had developed some sort of relation with Mohammad Akbar. However, there is no role of Mohammad Akbar, whatsoever, with the rape and torture of the victim, or torture of her family.

Rashid Pahloo slowly and gradually established some sort of relation with the victim's family through

Akbar. With every passing day Rashid Pahloo increases his visits to the victim's house

One day, Rashid Pahloo entered the house while his men remained outside the house. That day he separated the victim from rest of the family and took her to a separate room and raped her there. Nobody had any idea what was happening inside the room. The victim also did not disclose what had happened. This continues for four months. The victim out of fear and shame [that she felt], did not share what was happening with her family.

Another Ikhwan Bashir Ahmad Rather alias Chengez, part of Rashid's group, without informing his commander visited the victim's house. He took the victim to a separate room. The victim asked him to hand over the hand grenade he was carrying along to her as she will place it safely in the house. As soon as Bashir handed over the grenade, she tried to remove its pin unsuccessfully and that forced Bashir to run away from the house. It was then that the victim revealed what had been happening. The family had decided not to return the hand grenade to the Ikhwanis, as they could falsely implicate the family by showing recovery of the explosive. The grenade was hidden.

On the other hand, Bashir Ahmad misinformed his Ikhwan associates that the victim had snatched the grenade from him. To retrieve the grenade, Ikhwanis frequently raided the house and tortured the family members. The victim was subjected to torture as well. However, the family did not relent. They were also unsure whom to hand over the grenade to i.e. which authority. This dilemma continues for few months, as the family did not want to get falsely implicated in any frivolous case. The raids and torture continued for three months till the family agreed to return the grenade.

On every raid, the victim was hung upside down, dragged from room to room, beaten and frequently molested by the Ikhwanis. The continuous torture took a toll on her health. On one occasion, a Border Security Force [BSF] patrolling party spotted the victim hung to the ceiling inside her house. They entered and unfastened the rope. On enquiry, when the BSF men were told that she was hung by Ikhwanis they left the spot without saying anything.

In 1993, the victim, now pregnant, was taken to the hospital. She died after two days. Her death was a consequence of the rape and torture on her.

First Information Report [FIR] was filed with Sumbal police station in this case. No investigations have been carried out. The FIR itself is against "unknown persons".

In 1999, Rashid Pahloo killed the brother of the victim as he had apprehensions that he might take up the case of his sister. The brother was shot dead.

The family of the victim gave the above statement to the IPTK.

The statement provides credible and important evidence against the main alleged perpetrator Abdul Rashid Pahloo. Alleged perpetrator no.2 is also indicted by the statement. Further investigations are warranted. The status of the present FIR needs to be ascertained.

Case No. 3

Victim Details

[Name and identifying information withheld] [Torture and Sexual Assault]

Spouse: [Name withheld]

Resident of: Islamabad District

Alleged Perpetrators

1. Subedar Rattan Singh, Junior Commissioner Officer [JCO], 2 Rashtriya Rifles [2 RR], Army
2. Lance Naik [Lance Corporal] Pretam Singh, 2 Rashtriya Rifles [2 RR], Army
3. Lance Naik [Lance Corporal] Karan Singh, 2 Rashtriya Rifles [2 RR], Army

Case Information

First Information Report [FIR] no.29/1994 u/s 307 [Attempt to murder], 354 [Assault/Criminal force to a woman with intent to outrage modesty], 342 [Wrongfully confining person] Ranbir Penal Code, 1989 [RPC] was filed at the Anantnag Police Station on 27 January 1994¹.

By communication dated 19 May 2012 from the Jammu and Kashmir Police information was provided that a chargesheet was submitted and casefile sent for sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA]. A copy of the FIR was provided on 21 May 2012. By further communication dated 9 July 2012 from the Jammu and Kashmir Police, in addition to re-stating the information already provided, it was stated that while sanction for prosecution had been sought, no response had been received. By communication dated 16 November 2013 this position was re-stated. By communication dated 16 May 2014 from the Jammu and Kashmir Police information was provided that "The investigation of the case has been closed as challaned and case file along with relevant records and evidence both oral and documentary stands submitted to GOI for accord of sanction and the same lies with the concerned sanctioning authority". By communication dated 18 December 2014 from the Jammu and Kashmir Police, it was stated that enclosed was a copy of letter under which the CD file had been sent for government sanction. Enclosed is

communication dated 19 August 2003 from Senior Superintendent of Police [SSP], Anantnag, to Deputy Inspector General [DIG], South Kashmir. The communication encloses translated documents and statements of witnesses and seeks that sanction to be sought.

The FIR states that on 26 January 1994 personnel of the 2 RR came to the Village Sipan. In the afternoon of 27 January 1994 the 2 RR personnel left but forgot one of their weapons at the village in front of the house of the victim. Three unidentified persons came and took the weapon. The husband of the victim asked them not to do so because it belonged to the army. The husband of the victim was taken away by the unidentified persons. Then five army persons of the 2 RR, including a Sikh returned, and tortured the victim in the house of Gul Sheikh, s/o Ramzan Sheikh. They inserted chillies in her vagina and she felt terrible pain. She was then taken to the Police Line Anantnag where she was medically examined and her statement recorded.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that it was not received.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under AFSPA, stated on 6 September 2011 in relation to this case that sanction was sought from the Ministry of Defence on 8 September 2006 and was awaited.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir 12 years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice. Further, the slowness of the process is evident from the fact that it took three years – 2003 to 2006 - for the sanction file to pass from the DIG, South Kashmir, to the time the Government of Jammu and Kashmir sent the file to Ministry of Defence.

It needs to be ascertained whether the Jammu and Kashmir Government has at all sent the case for sanction for prosecution to the Ministry of Defence and whether the Ministry of Defence has misplaced the case file. Atleast after the 2009 affidavit by the Ministry of Defence, the Jammu and Kashmir Government should have considered even re-sending the case or clarifying when and how the case was sent.

In any case, after providing this information before the High Court of Jammu and Kashmir in 2009 and also in 1994 after the case was filed against the personnel of the army the Ministry of Defence seems to have cared

1 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

very little about the Jammu and Kashmir Police investigations or in instituting a process for delivering justice.

The available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 4

Victim Details

[Name and identifying information withheld]
[Abduction and Rape]
Resident of: Qazigund, Islamabad District

Alleged Perpetrators

1. Naik [Corporal] Harbhajan Singh, 1 Rashtriya Rifles [RR], Army, Camp Roads and Building Quarter, Qazigund
Rifleman Gurtej Singh / Ct. Gurmeet Singh, 1 Rashtriya Rifles [RR], Army, Camp Roads and Building Quarter, Qazigund²

Case Information

On 15 May 1994 at about 9:00 pm the alleged perpetrators with guns entered the house of the victim and took the husband of the victim along to the Qazigund Hospital and directed him to call a staff nurse. He refused. They beat him and asked him to stay near a shop. On the next morning when he reached home, his wife, the victim, informed him that she was gang raped by the alleged perpetrators at 2:00 am.

First Information Report [FIR] no.69/1994 u/s 376 [Rape], 452 [House trespass after preparation for hurt/assault/wrongful restraint] Ranbir Penal Code, 1989 [RPC] was filed at Qazigund Police Station on 16 May 1994³. The communication of 1 March 2012 stated that the case had been sent for sanction for prosecution under AFSPA. In a separate communication of 9 July 2012, the police provided information that this case was sent to the Zonal Police Headquarters, Kashmir Zone on 20 July 2005 by Deputy Inspector General, South Kashmir Range vide letter number CRB/SKR/accord/05/3715-16 for processing the sanction for prosecution under AFSPA. As of 12 May 2012 no response had been received. The FIR states that two army personnel entered into the house and beat the informant: Abdul Rashid Mir, son of Ghulam Nabi Mir. He was blindfolded, his hands tied, and he was taken to the hospital gate. He was asked to hand over a person to the army personnel. He refused. He was then taken to a shop

and asked to stay there. The army personnel left him there at 12:30 p.m. He managed to open his blindfold and he saw that he was at the shop of Salamuddin. He was terrified and did not return home. He went to the house of Ghulam Ahmad Shah and stayed there for a day. At 4:00 a.m. he returned home and his wife told him that two army persons had after 2:00 a.m. raped her. She said she could identify the two army personnel.

The Ministry of Defence, in its affidavit before the High Court in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that it had been received and that: "Vide letter dated 12.3.2007 the State Govt J&K has been informed that both the accused were tried by SGCM [Summary General Court Martial] for an offence of rape and awarded the sentence to suffer rigorous imprisonment for 10 yrs and to be dismissed from service. Their re-trial of the same offence will be in contravention to Article 20 (2) of COI [Constitution of India]".

The Government of Jammu and Kashmir, in response to an RTI on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction had been sought and was awaited.

On 10 January 2012 a RTI was filed to the Ministry of Defence seeking information of court of inquiries and court-martials conducted by the army in Jammu and Kashmir between 1990 and 2011. The information provided does not list the instant case. But, on a separate RTI pertaining to sanction for prosecution under AFSPA, response dated 22 June 2012 provides information on this case.

It is unclear what followed the court-martial process and whether the alleged perpetrators actually served their sentence or appealed against the court-martial verdict in the higher courts.

Based on the available documents, it is shocking that the police took at least 11 years, from 1994 to 2005, to complete investigations and submit the documents for seeking sanction for prosecution under AFSPA.

Another sad fact that after applying for the prosecution sanction the Government of Jammu and Kashmir lost track of the case and until 9 July 2012 had no knowledge of the court-martial verdict in the case or that sanction for prosecution had been declined.

Case No. 5

Victim Details

- 2 The Ministry of Defence, in its affidavit before the High Court in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], refers to this alleged perpetrator as "Rfn Gurtej Singh" whereas the Government of Jammu and Kashmir, in response to information sought under the Jammu and Kashmir Right to Information Act, 2009 [RTI] refers to him as "Ct. Gurmeet Singh".
- 3 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. Information and a copy of the FIR were provided on 1 March 2012. Further information sought through RTI on 15 October 2013. By communication dated 29 November 2013 from Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI dated 14 November 2014.

[Name and identifying information withheld on the request of the victim/witness] [Torture, Sexual violence]

Occupation: Housewife

Resident of: Palhallan, Pattan, Baramulla district

Brother of victim [Name and identifying information withheld on the request of the victim/witness] [Torture]

Occupation: Shopkeeper

Resident of: Palhallan, Pattan, Baramulla District

Alleged Perpetrators

1. Major Sinha [operational name: Liyaqat Ali Khan], Palhallan army camp
2. Subedar Mohan Singh, Palhallan army camp
3. Guard Commander Shravan Singh, Palhallan army camp
4. Mohammad Lateef Mir alias Jarra, Government Gunman
5. Abdul Shaban Tantray, Government Gunman
6. Riyaz Ahmad, Government Gunman
7. Saeb Hajam [Nickname/Code name], Government Gunman
8. Abdul Rasheed, Government Gunman
9. Ghulam Mohammad Waza alias Amma Waza, Government Gunman

Case Information

In end 1996, the victim was a minor. Personnel of the army abducted her from her home in the morning in the presence of her father. They were guided by a government gunman named Lateef; the wife of another gunman, Ama Waza [resident of Daselpora, Palhallan]; and a neighbor of hers. The army and the gunmen were interested in the whereabouts of her neighbor who was a militant with the Hizbul Mujahideen.

The army and gunmen took her to the Palhallan army camp and kept her there until the evening. At the army camp, Major Sinha alleged that she was hiding arms for the militants and promised her a sum of Rs. 1 lakh in return for this information. But she knew nothing, so, she told him this. She would later come to know that they had also abducted her brother from his school.

First, the gunmen, under the instructions of Major Sinha, stripped her of all her clothes. Then they beat her with sticks, many of which kept getting broken. Then they used a thick roller on her legs. They poured melted polythene into her vagina. After that, she lost consciousness. When she woke up, she was bleeding from her vagina.

During her torture, they brought in her brother. He had been badly tortured as well. His hands were tied behind him with ropes and he was unable to walk. Her

torturers told her brother to ask her to reveal the location of the weapons she possessed. Her brother pleaded to them to let her go.

It was only after a relative intervened that the gunmen and army let her go. The gunmen had stolen her earrings and sandals. Upon her return, the army drove her family out of their house and didn't allow them to come back for five days.

Due to her torture, the victim has had difficulties in conceiving children and has had multiple abortions; in fact, she started menstruating only after she was tortured. After the torture, she received treatment from Pattan and Barzulla Hospitals. Her treatment continues to this day. Her family did not register an FIR, as they feared retaliation from Major Sinha.

The victim gave the above statement to the IPTK on 15 June 2015.

The victim's statement is clear, and cogent evidence is presented of the torture/sexual violence by the alleged perpetrators. The allegations warrant further investigation and they are also corroborated by the statement of the brother as provided below, also provided to the IPTK.

The brother of the above victim states that the army created a committee in the village of which many village elders with links to the government gunmen were a part of. The army and the gunmen abducted his sister on recommendations of this committee on grounds that her brother [witness] was a militant and kept his weapons with his sister. The members of this committee were Kamal Bhat [dead], Abdul Khaliq Bhat [now Sarpanch], Jalal-ud-din Bhat [now Deputy Sarpanch], Abdul Aziz Rather [dead], Ghulam Nabi Tantray [dead], Ghulam Nabi Kochak [dead]. All the dead listed were killed by militants.

Around September/ October, 1996 the witness was abducted on his way from home to school where he had to attend a farewell party before his 10th grade exams. Gunmen Abdul Shabaan Tantry and Abdul Rasheed told him "Major Sahib needs cigarettes" referring to Major Sinha alias Liaqat Ali. Then they took him to Major Sinha who asked the witness if he knew the whereabouts of militants in the area. The militants replied that he knew of militants but had no contacts with any. Then the three took him to the Army Camp located in the Pandit houses in Palhallan and he was subjected to torture. His torture was carried out by Ghulam Mohammad Waza alias Amma Waza, Mohammad Lateef Mir alias Jarra, Abdul Rasheed, Riyaz Ahmad and "Saeb" [Nickname/Code name].

A roller was rolled over his legs and stomach with two men rolling it on each side. His toes, feet and private parts were subjected to torture using an electric current. His head was put into a bucket of chilli water while 2-3 men sat on his back and pushed his head into the water trying to choke him. He was also hung upside

down with rope.

On the 3rd day of his abduction, he was taken into the next house by Subedar Mohan Singh. This house was also part of the Army Camp. He says he saw his sister there but cannot describe her condition as she had been subjected to horrible actions. He says he dared to look only at her feet and saw them covered in blood. Also present in the house was Guard Commander Shravan Singh. When taken to see his sister, he was told to reveal information regarding militants and give up possession of his arms.

He was released after nine days of torture after the intervention of a local businessman.

Case No. 6

Victim Details

1. [Name and identifying information withheld]
[Assault, Destruction of Property and Enforced Disappearance]
Son of: [Name withheld]
Resident of: Dooru, Islamabad District
2. [Name and identifying information withheld]
[Assault and Rape]
Age: 16
Daughter of: Victim no.1
Resident of: Dooru, Islamabad District
3. [Name and identifying information withheld]
[Assault and Rape]
Daughter of: Victim no.1
Resident of: Dooru, Islamabad District

Alleged Perpetrators

1. Major Arora, 5 Rashtriya Rifles [RR], Army,
Camped at Batpora, Manzgam, Hakoora,
Islamabad District

Case Information

On 2 January 1997 at about 8:00 pm, Major Arora and other personnel of the 5 RR entered the residence of victim no.1 and alleged that he had gone to visit his son-in-law, Khursheed Ahmad Reshi, a Hizbul Mujahideen militant. Victim no.1 and his elder daughter, victim no.3 denied the allegation. Major Arora slapped victim no.3, shut the lights of the house, assaulted the victims and abducted victim no.1. Victim no.2 was raped by Major Arora. Victim no.3 was kept in a separate room and raped by the other personnel of the 5RR. After one and a half hours, the personnel of 5 RR left the house along with 50 sheep belonging to the victims and burnt the house to the ground. Victims 2 and 3 left the house and spent the night in a bathroom on the banks of the stream. Victim no.1 has disappeared since.

The family of victim no.1 gave a statement to the IPTK on 19 April 2012.

First Information Report [FIR] no.8/1997 u/s 376 [Rape] was filed at the Anantnag Police Station on 5 January 1997.⁴ By communication dated 14 May 2012 from the Jammu and Kashmir Police information was provided that the case was chargesheeted but sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] was declined. By further communication dated 9 July 2012 from the Jammu and Kashmir Police, information was provided that sanction for prosecution under AFSPA had been declined for "Maj Arora of 5 RR (JAT)". A copy of the 21 April 2010 decline of sanction letter was provided. This letter, from the Ministry of Defence to the Jammu and Kashmir Home Department, states that there is no prima facie evidence of the involvement of any personnel of the 5 RR in the case. It was considered pertinent that the husband of victim no.3 was "Khurshid Ahmed", a "dreadful Hizbul Mujahideen militant" during the period of the incident. Victim no.3 was forced to lodge a false allegation against the alleged perpetrator and his unit by "anti national elements/vested interest" to "malign the image of the security forces".

But, in a contradictory position, by communication dated 16 November 2013 from the Jammu and Kashmir Police it was stated that the case had been "sent" for government sanction but there is no mention of the decline of sanction. A similar position is taken in communication dated 16 May 2014 where the following is stated: "The investigation of these cases stands closed as challaned. The CD files along with relevant documents and evidence both oral and documentary stand submitted to concerned quarters for accord of sanction to prosecute or otherwise, the case is under investigation and as such, it comes under the purview of section 6(b) of Jammu and Kashmir Right to Information Act, 2009".

Further, there were found to be several inconsistencies in the statements of witnesses. None of the neighbors of victim no.1 or any of the villagers have any knowledge of an army patrol having come to the village. This was considered unlikely. Further, the letter states that the FIR notes that on the night of 3 January 1997, after the army apprehended victim no.1, the "two complainants took refuge with a neighbour out of fear". On being questioned about the identity of the neighbour, the complainants stated that they took refuge in a public bathroom nearby and not in a neighbour's house. Further, it was considered incomprehensible that the complainants did not raise any alarm immediately after the alleged incident, but waited for 40 hours to do so. It was also considered

⁴ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. A copy of the FIR was provided by the Jammu and Kashmir Police on 21 May 2012. Further information sought through RTI on 15 October 2013.

pertinent that the statements of witnesses had been recorded after four years and six months.

A letter dated 12 March 2004 from the Senior Superintendent of Police [SSP], Anantnag, to the Deputy Commissioner [DC], Anantnag, states that victim no.3 had moved an application requesting for a copy of the FIR in the case and a report in the matter in relation to the abduction of her father on 5 January 1997.

Subsequently, a report was received from Station House Officer [SHO], Anantnag Police Station that the victim was abducted by the armed forces as a suspect with the plea that militants were visiting the house of the victim. The husband of victim no.3, Khursheed Ahmad Reshi, was found to have been associated with the Hizbul Mujahideen, but later surrendered, and had a second marriage. The report also states that the army personnel “misbehaved” with victims 2 and 3.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that it was under consideration.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction was declined on 21 April 2010.

The Ministry of Defence, in response to an RTI on 10 January 2012 on sanctions for prosecution under AFSPA, stated in relation to this case that sanction was declined on 21 April 2007. Further, that: “there were a number of inconsistencies in the statements of witnesses. The allegation was lodged by the wife of a dreaded Hizbul Mujahideen militant. The lady was forced to lodge a false allegation by ANE’s [anti-national elements]”.

According to the family of Ghulam Mohammad Shah, the matter was also considered by the State Human Rights Commission [SHRC] which recommended that appropriate punishment be given to Major Arora. Further, Rs.5,00,000 and compassionate employment under SRO-43 [Statutory Rules and Orders] were recommended.

The family of victim no.1 state that they have received Rs.1,00,000 ex-gratia government relief but no compassionate employment under SRO-43 [Statutory Rules and Orders]. The son of victim no.3, is pursuing the matter as the adopted son of victim no.1.

Based on the available record it appears that the investigation into this case by the Jammu and Kashmir Police is not comprehensive at all. Apparently, the police is only investigating the allegation of rape whereas based on the family testimony there were atleast four crimes on that day with the family of victim no.1: the rape of victim no.2, rape of victim no.3,

enforced disappearance of victim no.1, assault on the victims and the destruction of property i.e. house of victim no.1. The 12 March 2004 letter from the Senior Superintendent of Police [SSP], Anantnag specifically notes the abduction of victim no.1. The FIR notes the abduction of victim no.1 and the rape of victim no.3. Finally, with regard to the police, it appears the police is disorganized as the 16 November 2013 communication does not refer to the denial of sanction at all.

The family has also received Rs.1,00,000 ex-gratia government relief which must have been for the abduction and enforced disappearance of victim no.1. It needs to be investigated why the Jammu and Kashmir Police ignored the other crimes.

The denial of sanction of 21 April 2010 is an example of the institutional denial of these multiple crimes. The claim made by the Ministry of Defence that the crime did not take place by stating that victim no.3 was married to a Hizbul Mujahideen militant and is perceived to be anti-national and liable to be untruthful is no defence and is not grounded in logic or the law.

Further, the inconsistencies referred to by the Ministry of Defence are weak, devoid of any understanding of a context and misrepresentations.

First, the issue of the delayed FIR is answered in the FIR itself wherein it is noted that victims 2 and 3 had been threatened by the army to not report the crimes, and that they were apprehensive of reporting the crimes due to continued disappearance victim no.1.

Second, the Ministry of Defence has declined sanction based presumably on the casefile of investigations submitted by the Government of Jammu and Kashmir.

The casefile is not with the IPTK and therefore the other assertions of the Ministry of Defence on contradictions in witness statements cannot be appropriately analyzed here. But, the Ministry of Defence has wrongly used the alleged contradictions between the FIR and the subsequent statements of the witnesses. The FIR is a document recorded by the police and cannot be used to contradict a duly recorded statement by a witness.

Finally, the available documents do not suggest that even a court-martial was conducted in this case by the army.

Case No. 7

Victim Details

1. [Name and identifying information withheld]
[Assault and Rape]
Resident of: Budgam District
2. [Name and identifying information withheld]
[Assault]
Resident of: Budgam District

Alleged Perpetrators

1. Major Nayar, 20 Grenadiers, Army, Beerwah, Budgam

Case Information

On 12 September 1997 the victims were beaten in their house by personnel of the 20 Grenadiers, camped at Beerwah, Budgam. Reportedly, victim no.1 was raped as well⁵.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that the FIR number was "312/97 Budgam" and that the victims were beaten up during a search in their house in September 1997⁶. The document does not have any reference to rape. The Ministry of Defence refers to Major Nayar as an accused in this case and the status for granting the sanction for prosecution under AFSPA as under consideration.

After acquiring the copy of the FIR number 312/1997 of the Budgam Police Station it appears that the FIR does not pertain to this case and has been wrongly mentioned by the Ministry of Defence in their 2009 affidavit.

Case No. 8*Victim Details*

1. [Name and identifying information withheld]
[Abduction, Wrongful Confinement, Torture and Rape]
Spouse: [Name withheld]
Resident of: Doda district
2. [Name and identifying information withheld]
[Abduction, Wrongful Confinement, Torture and Rape]
Age: 20
Daughter of: Victim no.1
Resident of: Doda district
3. [Name and identifying information withheld]
[Abduction, Wrongful Confinement, Torture and Rape]
Age: 25
Daughter-in-law of: Victim no.1
Resident of: Doda district
4. [Name and identifying information withheld]
[Abduction, Wrongful Confinement, Torture and Rape]
Age: 23
Daughter-in-law of: Victim no.1
Resident of: Doda district

Alleged Perpetrators

1. Chiranjeet Sharma [presumably Major], In-Charge, Army, Camp Mangeta
2. Captain, In-Charge, Camp Goha [as of 15 March 1999]
3. Rana, Intelligence Officer
4. Commandant [Commanding Officer], 322 Air Defence Artillery [ADA], Army
5. Milkha Singh, Junior Commissioned Officer [JCO], 322 Air Defence Artillery [ADA], Army

Case Information

An unsigned affidavit with the IPTK by victim no.1 states that the victims were informed on 15 March 1999 by Madhu Lal that Chiranjeet Sharma had asked to them to meet him at Madhu Lal's house. They preferred not to as the men of the family were not present. They were promised that Madhu Lal's family would be present. They went unwillingly, and under the threat of being mistreated if they refused.

On reaching Madhu Lal's house, they found no family members, but a contingent of army officers with soldiers, including Chiranjeet Sharma, an Army Captain who was In-Charge of Camp Goha, an Intelligence Officer Rana and JCO Milkha Singh.

As soon they reached the house, they were taken inside and raped at gun point by the Army Captain who was In-Charge of Camp Goha, the Intelligence Officer Rana and JCO Milkha Singh. The Commanding Officer, 322 ADA then came, tortured the victims and then raped victim no.2.

In the evening they were taken to the Goha Camp and held confined till 19 March 1999. They were raped and tortured.

On 19 March 1999, victims 3 and 4 were released but victims 1 and 2 were taken by Rana and the Commanding Officer, 322 ADA to Doda where a fake certificate that no rape had taken place was issued by Dr. Pushpa. They were then handed over to the Doda Police Station.

No information exists on the status of this case and whether any investigations were conducted.

Case No. 9*Victim Details*

[Name and identifying information withheld] [Rape]
Resident of: Baramulla District

Alleged Perpetrators

⁵ JKCCS, State of Human Rights in Jammu and Kashmir, 1990-2005, 2005, p.289.

⁶ Information on the FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. On 27 December 2011 a response was received and a copy of the FIR was provided.

1. Major Aman Yadav, 28 Rashtriya Rifles [RR], Army, Camp Shalkote village, Rafiabad

Case Information

From 24 November 1999 to 15 December 1999 the husband of the victim was outside the State to procure goods towards his work, leaving behind the victim, two children and a domestic help.

On his return, he found that Major Yadav and personnel of the 28 RR Camped at Shalkote village, Rafiabad had forcibly entered into his residence during the day time on 5 December 1999. They had searched the house and stolen gold amounting to Rs. 35,000, electric goods worth Rs. 25, 000, a power drilling machine worth Rs. 13,500, materials along with tool box worth Rs. 8,000 and other domestic items to the extent of Rs. 5,000 and cash of Rs. 15,000. The victim and others in the house had raised an alarm. The victim was then physically assaulted, stripped naked and raped. The RR personnel and Major Yadav sternly warned the victim and house-help of dire consequences in case the theft was reported. Major Yadav and the 28 RR personnel were accompanied by a masked Government Gunman [Ikhwan].

Following this incident and due to fear, the victim, her husband and the rest of the family were forced to abandon the house and seek shelter elsewhere.

First Information Report [FIR] no.1/2000 u/s 380, 354 [Assault/Criminal force to a woman with intent to outrage modesty], 376 [Rape] Ranbir Penal Code, 1989 [RPC] was filed at the Panzala Police Station on 4 January 2000⁷.

The communication dated 22 May 2012 further stated that the case was closed by declaring the perpetrators as untraced.

A noting on the FIR reveals that the case was closed as untraced on 19 August 2011.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was received in January 2009 and under consideration.

But, the Ministry of Defence, in response to an RTI on sanctions for prosecution under AFSPA, stated on 10 January 2012 in relation to this case that sanction had been declined on 23 September 2010. Further, that: "the allegation is baseless and framed with malafide intention to put the army on defensive."

The Ministry of Defence does not clarify which parts of

the allegations are baseless. It is unclear whether the factum of the rape of the victim is also challenged by the Ministry of Defence.

The assertion by the Ministry of Defence that the allegations were framed with mala fide intention is a sweeping comment on the investigations with no proof and suggests that the army is at loggerheads with the Jammu and Kashmir Police which results in delay or denial of justice.

The Ministry of Defence official documents on sanctions also show the lack of seriousness as the 10 January 2012 document places the incident on 5 March 2000 and refers to this as a case of torture leading to death.

Further, it is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir nine years to investigate and process the case for acquiring sanction for prosecution under AFSPA, which apparently helped the perpetrators in evading justice.

Surprisingly, the decline of sanction led to the police disregarding its own investigations and hence closing the case by declaring the perpetrators as untraced.

Case No. 10

Victim Details

1. [Name and identifying information withheld]
[Rape]
Spouse: [Name withheld]
Residents of: Doda District
2. [Name and identifying information withheld]
[Rape]
Daughter of: [Name withheld]
Resident of: Doda District

Alleged Perpetrators

1. Captain Ravinder Singh Tewatia, Commander, C-Company, 12 Rashtriya Rifles [RR], Army, Upper Gund, Banihal
2. Bharat Bhushan, Special Police Officer [SPO], Jammu and Kashmir Police
3. Shailender Singh [Operational name: Razaq], SPO, Jammu and Kashmir Police
4. Sanjay Kumar [Operational name: Mohammad Saleem], SPO, Jammu and Kashmir Police

Case Information

On 14 February 2000, the alleged perpetrators came to the residence of the victims at about 8:00 pm. The

⁷ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 22 May 2012, a copy of the FIR was provided.

alleged perpetrators asked the two victims to prepare tea. The family members were then asked to come out of the house for their statements to be recorded. Then the victims were taken in two separate rooms and raped by Captain Ravinder Singh Tewatia and SPO Bharat Bhushan. The other two alleged perpetrators remained outside the house, at a local inn, keeping guard. After about three hours the alleged perpetrators left.

First Information Report [FIR] no. 20/2000 was filed in the Banihal Police Station u/s 452 [House trespass after preparation for hurt/assault/wrongful restraint], 342 [Wrongfully confining person], 356 Ranbir Penal Code, 1989 [RPC] on 15 February 2000. The FIR states that both the victims were raped. The alleged perpetrators are not named.⁸ The 15 June 2012 communication from the Jammu and Kashmir Police states that the case was closed as chargesheeted and transferred to the Sessions Court, Jammu on 19 October 2007 from the Sessions Court, Ramban.

Following the investigations, two separate chargesheets were prepared [u/s 376 (Rape), 452 (House trespass after preparation for hurt/assault/wrongful restraint), 342 (Wrongfully confining person) and 166 Ranbir Penal Code, 1989 (RPC)] for Captain Ravinder Singh Tewatia and SPO Bharat Bhushan. Both chargesheets were produced on 1 April 2000 at the Chief Judicial Magistrate [CJM], Banihal. SPO Bharat Bhushan was committed for trial on 1 April 2000 to the court of Additional Sessions Judge, Ramban. During the trial he was granted bail. On 1 April 2000, Captain Ravinder Singh Tewatia, and his chargesheet were forwarded to the army authorities. A Summary General Court-Martial [SGCM] was convened and Captain Ravinder Singh Tewatia was found guilty u/s 376 (1) [Rape] Ranbir Penal Code, 1989 [RPC] and was sentenced vide order dated 1 October 2000 to dismissal from service and imprisonment for seven years. Captain Ravinder Singh Tewatia challenged the order of 1 April 2000 by the CJM, Banihal before the Additional Sessions Judge, Ramban, which was rejected on 14 December 2000, and then filed Criminal Revision no. 11/2001 before the High Court of Jammu and Kashmir. Captain Ravinder Singh Tewatia also challenged the findings of the SGCM on 1 October 2000 [which was confirmed by the Confirming Authority on 14 December 2000] before the High Court, Jammu bench, in Original Writ Petition [OWP] 742/2001.

The final judgment in this case by the High Court was on 31 December 2002. The judgment of the SGCM was set aside. Criminal Revision no. 11/2001 was considered infructuous and disposed off. The High Court considered the medical report on record which found evidence of recent sexual assault. The Union of India, Ministry of Defence, filed a Letter Patent Appeal

[LPA no. 17/2003] before the Jammu bench of the High Court that remains pending before the court to date. In this LPA, it was argued that the High Court had no jurisdiction to review the substantive portions of the court-martial process, and that the High Court erred in its analysis of the facts of the case.

Information on the petition numbers was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 2 July 2012. By communication dated 27 June 2013, partial information on LPA no. 17/2003 was provided. Further, two RTI's were filed, to the Director Litigation, Jammu, and the Jammu Bench of High Court, on 26 April 2012 for the documents, including the final findings, at the SGCM level. While responses were received, the documents were not provided for varied reasons. Information on petition numbers 742/2001 and 11/2001 was sought again on 4 April 2014.

For the purposes of analysis, the documents on record available to the IPTK will be considered. Essentially, the submissions before the High Court in OWP 742/2001, including the final decision of 31 December 2002 may be considered. While arguments on procedural issues were raised, the focus of this analysis will be on the substantive issues.

The substantive arguments of Captain Ravinder Singh Tewatia before the High Court were as follows:

- Though "complainant party" knew the Captain Ravinder Singh Tewatia "very well" much before the occurrence and alleged to have identified him during the occurrence, no mention was made of him in the FIR or before the police or other authorities who met with the concerned persons. The identity of Captain Ravinder Singh Tewatia was mentioned for the first time before the SGCM. The involvement of the Captain Ravinder Singh Tewatia in the occurrence came to be established during an identification parade conducted by the Tehsildar at the Ramsu Police Post, where he was identified by victim no.2 and her father.
- There is a contradiction between the testimony of victim no.2 and her father. Victim no.2 states that she was raped in the kitchen on a mat. Following the rape, she folded the mat and then had a bath. Her father states that when he saw victim no.2 after the rape, she was unconscious.
- There were ten members of the family in the house during the occurrence. There were allegation of beating but none of the family members was found to have been injured. Further, victim no.2, on medical examination, was found to be "sound and oriented and without any mark of injury on any part of the body".

⁸ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 15 June 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. By communication dated 20 November 2013 a copy of the FIR and final report was provided. Further, it was stated that on 19 October 2007 the CD file of the case was sent to the High Court, Jammu for preliminary arguments in the matter.

- The medical report pertaining to the examination of victim no.2 is a fabricated document.
- According to Sona-Ullah and the FIR the timing of the occurrence was 8:00 pm. But, the evidence suggests that the ambush party under the command of Captain Ravinder Singh Tewatia left the company location at Upper Gund at 8:30 pm and “after deploying in the way the army personnel near the house of Abdul Gani Rather and two SPOs at namely Shailender and Sanjay” at a local inn, Captain Ravinder Singh Tewatia and SPO Bharat Bhushan reached Nowgam at 9:00 pm. Therefore, the four persons who were at the house of the victim at 8:00 pm could not have included the alleged perpetrators.
- The statement of Captain Ajit Singh pertaining to the confession of Captain Ravinder Singh Tewatia is unreliable. As per Captain Ajit Singh the confession was made on the morning of 15 February 2000 but the confession was not disclosed to the senior officers of Captain Ravinder Singh Tewatia in the same evening, when investigations were being made. This was brought up by the prosecution for the first time before the SGCM. There were also other contradictions in the statement of Captain Ajit Singh.

Attached to the main submissions of Captain Ravinder Singh Tewatia before the High Court was a letter addressed by his advocate under Section 164 of the Army Act, 1950 to the Defence Secretary, Government of India. This letter makes the following additional substantive arguments:

- While repeating the argument that the name of Captain Ravinder Singh Tewatia was not mentioned in the FIR, it is submitted that the father of victim no.2 on being questioned [presumably before the SGCM] stated that this was due to the fear of the family in specifically naming the perpetrator. Victim no.2 also deposed to being threatened by Captain Ravinder Singh Tewatia prior to the rape. The response given in this letter is that this is not a believable statement as the father of victim no.2 was in the company of “his own people”.
- The father of victim no.2 had been investigated earlier by Captain Ravinder Singh Tewatia for his involvement with militants. This coupled with the area in question being a “hub of militancy activities” and the “people having a soft corner for militants” suggests that the allegations of rape were unreliable.
- The lack of injuries on victim no.2, lack of any shouting or struggle on her part, suggests there was no rape but consensual sexual intercourse. Further, the father of victim no.2 asked Captain Ravinder Singh Tewatia to be careful that the victim was not impregnated. Therefore, his concern was on the issue of impregnation, thereby suggesting that the intercourse itself was

consensual.

The final decision of the High Court was issued on 31 December 2002. The relevant points are as under:

- The testimony of victim no.2 is reproduced in great detail. One point of interest is a reference to a person named “Imtiaz” who spoke in Kashmiri. She also stated that she recognized alleged perpetrator no.1 when they were in the kitchen as he had come to their house on a raid about a month prior to the incident. She mentioned this to her parents after the incident of rape and on the next morning to her uncle. She also stated that following the rape she did not fold the blanket. But she did have a bath. The main act of rape was for about 30 minutes. She stated that Captain Ravinder Singh Tewatia had sexual intercourse twice with her. She also stated that she did not reveal the name of the perpetrator out of fear.
- The testimony of the father of victim no.2 is also reproduced in great detail. The testimony is very similar to the testimony of victim no.2. The father also stated that when he entered the kitchen, his daughter was unconscious. After she awoke she told her parents that she had been raped.
- The testimony of Captain Ajit Singh is also reproduced in great detail. The crux of his testimony was that on 15 February 2000 Captain Ravinder Singh Tewatia told him that he had sexual intercourse with victim no.2.
- The High Court also considered the testimony of SPO's Shailender Singh and Sanjay Kumar. From their testimony, the High Court concluded that “Imtiaz” was a code name, but it is unclear whose code name it was.
- In its conclusions, the High Court stated the following:
 - “If the evidence of these SPO's is discarded, then there remains nothing to substantiate that the petitioner ever entered the house in question”.
 - That the name of Captain Ravinder Singh Tewatia, which was known to victim no.2 and her father should have been told to the police. At the very least, the uncle or other relatives should have been informed. Further, victim no.2 never stated in the FIR that she was raped twice. victim no.2 is not a reliable witness.
 - The allegations of persons being beaten is not reliable as there were no injury marks on any of the persons.
 - The villagers, following the incident, were protesting against the 31 RR, of which Captain Ajit Singh was a part. This was considered to be the reason why Captain Ajit Singh chose to shift the blame to Captain Ravinder Singh Tewatia.
 - “That the parents of the girl” stated that she was found unconscious following

the alleged rape, but victim no.2 stated that she went for a bath. This was a contradiction.

- That who typed the medical report, and why it was signed by only three out of the four Doctors is unclear. Further, it is unclear whether it was typed on the date of examination or thereafter. No reliance can be placed on the medical report.

Based on the above findings, the decision of the SGCM was set aside and the statement of victim no.2 was found unreliable.

Before analyzing the decision of the High Court, the following preliminary points may be made:

- The IPTK does not have a copy of the decision of the SGCM. Further, the victims, or their family members, have not been met by the IPTK. Therefore, this limits the scope of the analysis.
- From the reading of the documents it appears that the conviction of Captain Ravinder Singh Tewatia was for the rape of victim no.2. But, technically, as it was allegedly a joint operation, the charge for both rapes could hold against him.
- The documents available provide very little information on the rape allegation against SPO Bharat Bhushan, except the information received by RTI which may pertain to SPO Bharat Bhushan as well. Therefore, the analysis will focus on the allegations against Captain Ravinder Singh Tewatia.

The submissions and findings may now be analysed as follows:

- There appears to be a contradiction on when Captain Ravinder Singh Tewatia was first identified i.e. during the identification parade or before the SGCM. Further, on one hand he states that medical examination confirms that victim no.2 was not injured. On the other hand he suggests the medical report was a fabricated document. Further, the medical report does confirm sexual assault.
- The issue of Captain Ravinder Singh Tewatia not being named in the FIR appears to be a major issue. The family of the victim suggest that this was due to their fear. It would prima facie appear to be unfortunate that the High Court chose to dismiss fear as a legitimate reason. Within the context of Jammu and Kashmir, it would appear to be a legitimate reason. Further, while victim no.2 states that she informed her parents right after the incident, and her uncle the following day, that Captain Ravinder Singh Tewatia was responsible, the High Court erred by not giving any weightage to this. Further, while on one hand the High Court accepts that the uncle was informed, subsequently the High Court states that he was not informed. This would once again

appear to be an error on the part of the High Court. Further, the mere fact that victim no.2, or Sona-Ullah, did not mention earlier that she was raped twice, while a contradiction for the High Court, appears to be very minor.

- The issue of what exactly victim no.2 did immediately following the rape also appears to be an issue that the High Court gave weightage to. Based purely on the records available, the contradiction is not adequately made out. While victim no.2 does state that she had a bath, she does not explicitly state that she was *not* unconscious immediately following the rape.

Therefore, based on the record available, it would appear that the story of victim no.2 is consistent with the other evidence, and that the High Court erred by overturning the SGCM decision.

The final point to be considered is the manner in which the Government of Jammu and Kashmir has approached the matter. In response to a RTI application filed, the Director of Litigation, Jammu has stated vide letter dated 17 May 2012 that the Government of Jammu and Kashmir did not challenge the High Court judgment as the order was not directed against the State. Considering that the police within the State deemed it fit to file a chargesheet in the case, it is unfortunate that the Government did not deem it fit to further litigate the matter. This is particularly alarming considering that the LPA filed by the Ministry of Defence remains pending from 2003. Information received by RTI on 27 June 2013, lists the last activity in this matter as being of 17 March 2003 – when the LPA was admitted, notices issued and the High Court order stayed. Further, no information exists on the effect of the staying of the High Court final decision.

Further, in addition to concerns with the court-martial proceedings in Jammu and Kashmir, it is clear that the instant case should have been tried before the criminal courts.

Firstly, in light of section 34 [Common intention] of the Ranbir Penal Code, 1989 [RPC], Captain Ravinder Singh Tewatia would be guilty of the rape of both victims.

Second, by splitting the case between the court-martial and the criminal court, the efficacy of the trial is affected.

Finally, it is concerning that the trial of SPO Bharat Bhushan does not appear to have reached any logical conclusion. It is also unfortunate that SPO's Shailender Singh and Sanjay Kumar, who abetted in the crime, do not appear to have been proceeded against.

This case is also an example of the inevitability of the acquittal of alleged perpetrators as even when a court-martial finds a person guilty, ultimately the

processes of justice appear to result in a denial of justice.

Case No. 11

Victim Details

[Name and identifying information withheld] [Rape]

Age: 17

Daughter of: [Name withheld]

Resident of: Pahalgam, Islamabad District

Alleged Perpetrators

1. Havaladar Nathula, 58th Battalion Border Security Force [BSF], Camp Dahwauth, Pahalgam
2. Havaladar Krishnan Kumar, 58th Battalion Border Security Force [BSF], Camp Dahwauth, Pahalgam
3. Constable R.C. Marmoo, 58th Battalion Border Security Force [BSF], Camp Dahwauth, Pahalgam

Case Information

On 18 April 2002 at about 11:00 am the victim was gang raped by Havaladar Nathula, Havaladar Krishnan Kumar, and Constable R.C. Marmoo of the 58th Battalion BSF.

The alleged perpetrators, part of a BSF patrol of 20 to 25 persons, came to the residence of the victim and asked everyone to come out. Then, the alleged perpetrators took the victim back inside the residence for a search. The victim was raped and she lost consciousness.

First Information Report [FIR] no.10/2002 u/s 452 [House trespass after preparation for hurt/assault/wrongful restraint], 376 [Rape], 34 [Common intention] Ranbir Penal Code, 1989 [RPC] was filed at the Pahalgam Police Station on 18 April 2002.

The FIR states that the victim was raped by personnel of the 58th Battalion of the BSF. Information on this FIR was sought through RTI on 7 October 2011. By communication dated 19 May 2012, from the Jammu and Kashmir Police, information was provided that the case was chargesheeted against the alleged perpetrators and was before the Chief Judicial Magistrate, Anantnag u/s 450, 376 [Rape], 34 [Common intention] Ranbir Penal Code, 1989 [RPC].

On 21 May 2012 a copy of the FIR and chargesheet were provided. Despite the Jammu and Kashmir Police stating that a chargesheet was filed in this case no substantive progress appears to have taken place.

Based on the available documents, particularly the 6 September 2011 Government of Jammu and Kashmir response to information sought through the Jammu

and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], no sanction for prosecution appears to have been sought in this case.

Case No. 12

Victim Details

[Name and identifying information withheld] [Torture and Rape]

Age: 16 [at the time of the incident]

Daughter of: [Name withheld]

Resident of: Zachaldara, Kupwara District

Alleged Perpetrators

1. Deputy Superintendent of Police [DSP], Altaf Ahmad Khan [now Superintendent of Police (SP)], Jammu and Kashmir Police
2. Constable Parveena, Handwara Police Station [currently working in Criminal Investigations Department (CID)], Jammu and Kashmir Police
3. Constable Haleem, Handwara Police Station, Jammu and Kashmir Police

Case Information

Mushtaq Ahmad Wani was killed on 4 June 2004. The victim was picked up on 3 July 2004 from her school by the alleged perpetrators and taken to the Zachaldara Police Post. Abdul Qayoom Bhat, a cousin of the victim, and a surrendered militant, was arrested in relation to the killing of Mushtaq Ahmad Wani.

The victim was kept at the Police Post for three hours. Constables Parveena and Haleema beat her with wooden sticks. DSP Altaf Ahmad Khan was present at this time. The victim was beaten all over her body. DSP Altaf Ahmad Khan then asked Constables Parveena and Haleema to leave the room and he told them he would extract the statement from the victim himself. DSP Altaf Ahmad Khan beat the victim and then started tearing her clothes. The victim's shirt and pyjama were removed and she was thrown on the floor. The victim asked for water and she was given water with salt and chilli. A heavy roller was rolled over the victim's legs. During the beatings by DSP Altaf Ahmad Khan the victim spat on his face against his sexual advances. The victim was kicked in her abdomen by DSP Altaf Ahmad Khan and this resulted in her falling unconscious. Subsequently, the victim realised that she had been raped while she was unconscious as she was bleeding profusely from her vagina.

Following the events, the victim was hospitalized for close to fifty days where she was operated upon and her uterus was removed.

Following protests, the victim was allowed to go to the

Handwara Police Station. The victim filed an application but no First Information Report [FIR] was recorded.

The victim approached the State Human Rights Commission [SHRC] and on 19 November 2008 the final decision was issued where it was stated that the victim had been subject to “the worst type of human rights violations at the hands of two lady constables and the DSP Altaf Ahmad Khan”. The SHRC recommended appropriate relief and an enquiry by a senior administrative/police officer. The victim received Rs. 75,000 as relief.

In a case where no FIR has been lodged, and apparently no investigations conducted, the proceedings at the SHRC may be analysed.

On 31 January 2008, the SHRC received a report from the Inspector General of Police [IGP], Kashmir dated 24 June 2005 which stated that the victim was summoned to the Zachaldara Police Post and when she stated that she was passing through her menstrual course she was let off. The victim contested this report before the SHRC.

The SHRC therefore set up an enquiry to be conducted by the Sub District Magistrate, Handwara. The enquiry was conducted by the Assistant Commissioner, Handwara where a “number of witnesses” were examined. The SHRC in its final decision refers to the testimony of only two of the witnesses [in addition to narrating the complaint of the victim herself]: Dr. Mohammad Yousuf and Dr. Mohammad Farooq. Dr. Mohammad Yousuf stated that the victim was brought to the hospital at about 2:00 pm. She had multiple bruises and “haematomas” on her entire body. Dr. Mohammad Farooq also corroborated this testimony and confirmed signs of torture on the victim's body. The SHRC concluded that the victim had become “the worst type of human rights violations at the hands of two lady constables and the DSP Altaf Ahmad Khan”.

Also, on record is a certification from the Sub-District Hospital, Handwara, dated 23 August 2006, which states that the victim was admitted in the hospital on 3 July 2004. She was found to have multiple bruises and haematomas on her whole body. She had intermittent vomiting and “LOC”. “Haemodynamically she was having hypertension”. She was also having “fear psychosis”.

The SHRC decision while indicting the alleged perpetrators [but only DSP Altaf Ahmad Khan is referred to by name], lacks rigorous analysis and is unfortunately vague when referring to the “worst type of human rights violations”. The victim had complained of torture and molestation. The SHRC

decision, in addition to not discussing the other witnesses examined, does not in detail spell out the torture and molestation that took place. Further, despite receiving the complaint from the victim on 24 March 2005 and the response from the IGP, Kashmir, on 24 June 2005, the SHRC ordered an enquiry almost three years later on 31 January 2008. Notwithstanding the weaknesses in the SHRC decision, it does serve as an indictment on the alleged perpetrators [particularly DSP Altaf Ahmad Khan as he is specifically named in the SHRC decision]. But, despite the SHRC recommendation for an inquiry, it appears no investigations have taken place. Further, DSP Altaf Ahmad Khan was promoted as a SP, awarded the Director General of Police's Commendation Medal for 2010, Gallantry award on 26 January 2012, a Presidents Police Award for Gallantry on 15 August 2012, but has multiple accusations against him of human rights violations while he was posted in the Sopore area of Baramulla District. In the extra-judicial killing of Nazim Rashid Shalla, DSP Altaf Ahmad Khan was implicated in the case and transferred from Sopore.

Case No. 13

Victim Details

1. [Name and identifying information withheld] [Wrongful Confinement and Sexual Assault]
Daughter of: Victim no.2
Resident of: Budawab, Tulel, Gurez, Bandipora District
2. [Name and identifying information withheld] [Wrongful Confinement and Sexual Assault]
Spouse: [Name withheld]
Resident of: Gurez, Bandipora District
3. [Name and identifying information withheld] [Wrongful Confinement and Sexual Assault]
Daughter of: Victim no.2
Resident of: Gurez, Bandipora District
4. [Name and identifying information withheld] [Wrongful Confinement and Sexual Assault]
Daughter of: Victim no.2
Resident of: Gurez, Bandipora District

Alleged Perpetrators

1. Colonel Rajan Jamwal, Commanding Officer, 20th Punjab Infantry, Army
2. Subedar Major Harbans Singh, 20th Punjab Infantry, Army

Case Information

Victim no.1 filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 353/2007]⁹.

Information on the petition number was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 August 2012. No information was provided.

The petition states that in 2005 the army began a social welfare scheme in the concerned area for the civilians under the name and title of "Sadhbhavna Operation". Colonel Rajan Jamwal encouraged people in the village to form a committee in this regard. Victim no.2 was persuaded to be a part of this committee. In November 2005, due to severe weather conditions, victim no. 2 ceased to visit the office of Colonel Rajan Jamwal in relation to her work on the constituted committee. At this point, Colonel Rajan Jamwal sent his soldiers to the house of victim no. 2 and informed her that she was required to attend the office. When victim no. 2 met with Colonel Rajan Jamwal, she was informed that she would need to attend the office every afternoon, failing which her family would be implicated in a case related to subversive activities. On this occasion, and on subsequent occasions when victim no. 2 would visit the office of Colonel Rajan Jamwal, she was molested. Further, Colonel Rajan Jamwal kept a close watch on the victims and their family, and he did not allow any of them leave the village. This was to ensure that they could not seek any help for their situation.

The exploitation of victim no. 2 continued until May 2006. In June 2006, Colonel Rajan Jamwal asked victim no. 2 to arrange some girls for the entertainment of army officers. She was threatened with dire consequences if she failed to do so. At this point, victim no. 2 stopped attending the office of Colonel Rajan Jamwal and instead informed the elder heads of the village of the exploitation she had been facing. The village heads approached Colonel Rajan Jamwal and told him that they would discuss the issue with his commander. At this, Colonel Rajan Jamwal beat victim no.2 in front of the village heads. Colonel Rajan Jamwal threatened victim no. 2 and told her to withdraw her allegations. The village heads also sought to persuade victim no. 2 to soften her stand against Colonel Rajan Jamwal. But, she was also advised to contact the Sub-District Magistrate, Gurez.

The Sub-District Magistrate then contacted the Army Brigade Headquarters who assured him that action would be taken and apologies would be made. But, this did not subsequently happen.

In July 2006, when the male members of the family of the victims were not present, Colonel Rajan Jamwal sent his soldiers to the residence of the victims where all the victims were molested. Victim no. 3 recognised Subedar Major Harbans Singh on this occasion. The victims were saved on this occasion by the police. They were kept in a police post for three days. But, even the police were unable to take any action against the army. Even an FIR could not be filed.

On political intervention they were able to return to their residence. But, they were effectively confined to their residence. Subsequently, Colonel Rajan Jamwal ordered that victim no. 1 be brought to his office. As a result of the threats against victim no. 1, she left her studies and joined a religious seminary at Sopore.

Further, this led to the filing of the petition for protection, action against Colonel Rajan Jamwal and compensation.

On 17 May 2007, the High Court ordered the Divisional Commissioner, Kashmir and Inspector General of Police [IGP], Kashmir Range to provide protection to victim no.1 and her family. In July 2007, Colonel Rajan Jamwal filed objections before the High Court. It was stated that the father of the petitioner, victim no. 1, worked in the Defence Labour Procurement Department and had a number of grievances with army, and had filed frivolous writ petitions in the past. It was also stated that in one of the petitions filed, he had wrongly added the names of two others persons as petitioners. These persons had subsequently stated that they had been falsely included in the petition. On record is an affidavit from a person named Ali Lone who states in the affidavit, without naming the father of victim no.1, that he has never had any dispute with the army. Further, that an unknown person had approached the High Court against the army and had fraudulently taken Ali Lone's name. A similar affidavit by Abdul Hamid Khan is also on record. Other affidavits are on record against the father of victim no.1 on issues of land, and in support of the army.

It was also pointed out that no FIR had been filed in the case, and in fact victim no.2 was not even a party to the petition, suggesting therefore that the petition was a frivolous one and defamatory in nature.

Further, it was stated that victim no.1 left for Sopore in 2004, which was before Colonel Rajan Jamwal came to his posting in Gurez. Therefore, the suggestion that victim no.1 had to go to Sopore because of Colonel Rajan Jamwal was incorrect. The allegations in the petition were therefore denied. On 2 April 2012, the petition was dismissed for non-prosecution.

It is shocking that a case such as this one does not appear to have been investigated by the Jammu and Kashmir Police.

The above information alone would warrant the Jammu and Kashmir Police to carry out immediate investigations. But, despite the passage of seven years, and a petition being filed in the High Court, no investigations appear to have been conducted.

Further, the Ministry of Defence seems to have cared very little about the High Court proceedings, the Jammu and Kashmir Police investigations or in instituting a process for delivering justice.

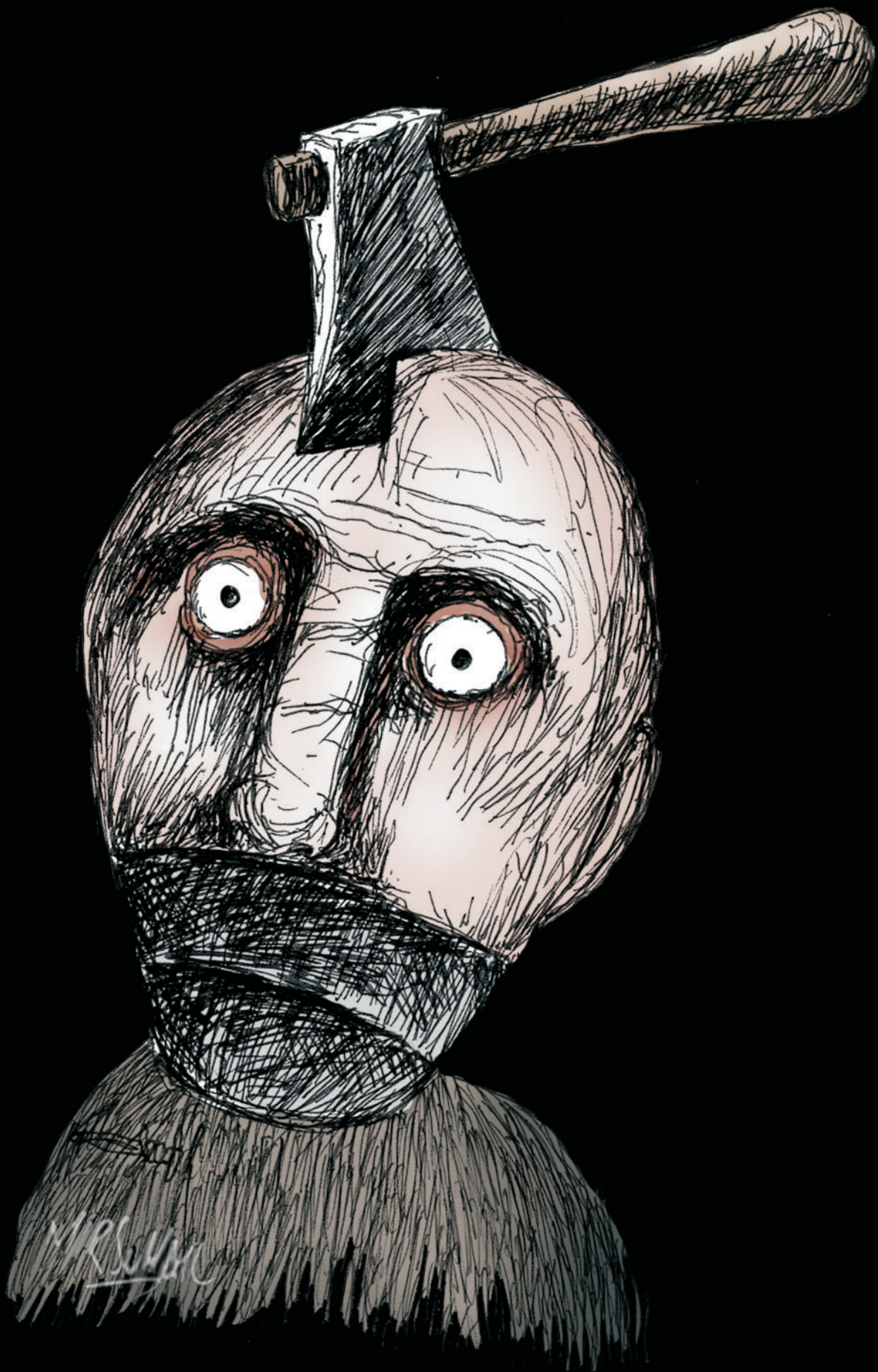
The available documents do not suggest that even a Court-Martial was conducted in this case by the army.

TORTURE

Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

[Article 1, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment]

This Sub Chapter has 49 Case Studies



PART E: TORTURE

Case No. 1

Victim Details

Manzoor Ahmad Naikoo [Wrongful confinement and Torture]
 Age: 51
 Occupation: Businessman
 Son of: Abdul Aziz Naikoo
 Resident of: Palhallan, Pattan, Baramulla District

Alleged Perpetrators

1. Personnel of Camp Hyderbeigh, Pattan, Baramulla District
2. Personnel of 2nd Dogra Regiment, Army
3. Major S.S. Sinha [Operational name: Liyakat Ali Khan], 8 Rajputana Rifles, Army, Camp Palhallan, Pattan, Baramulla District

Case Information

The victim was tortured on three separate occasions.

First, on 23 April 1991, at the Hyderbeigh Army camp, Pattan. Manzoor Ahmad Naikoo does not remember the identities of the perpetrators of the torture. Also, he did not file any complaint.

Second, on 28 September 1991, Manzoor Ahmad Naikoo was brutally tortured by personnel of the 2nd Dogra Regiment, Army, at his residence and in the nearby Higher Secondary School building. Manzoor Ahmad Naikoo was beaten and his hands were tied. A cloth was tied to his penis, which was then set on fire. Manzoor Ahmad Naikoo was electrocuted. Further, a rod was inserted in his rectum. Lateef Mir, son of Gaffar Mir, resident of Palhallan [at teacher at Kralwat], was also tortured at the Higher Secondary School building and then shifted to the victims house for further torture, where a rod was inserted in his rectum.

Following this incident of torture, the victim was operated upon and a medical certificate was issued by the Shri Maharaja Hari Singh Hospital [SMHS], Srinagar that confirmed that the operation was for an injury sustained during interrogation.

Manzoor Ahmad Naikoo continues to live the horror of the torture as he has a medical condition where he cannot defecate or urinate naturally. Manzoor Ahmad Naikoo does not remember the identities of the perpetrators of the torture.

FIR no.120/1991 u/s 302 [Murder], 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] was filed at

the Pattan Police Station for the second incident where there was a crackdown and interrogation at the Higher Secondary School building that resulted in custodial deaths as well. The FIR itself refers to the death of Lateef Mir, but does not mention the victim. Further, names are provided of other people who were picked up during the crackdown that went on for two days, such as: Mushtaq Ahmad, son of Ali Mohammad Bhat, Ghulam Mohi-ud-Din Sofi, son of Abdul Razzak Sofi, a name that is unclear on the copy of the FIR and others.¹ The FIR was filed by Abdul Gani Mir, resident of Raypora, Palhallan, a cousin of Lateef Mir. The victim states that while his name was not originally in the FIR, it was added subsequently. By communication dated 22 April 2014 from the Jammu and Kashmir Police a copy of the FIR was provided and information that the case was closed by declaring the perpetrators as untraced. Communication dated 6 January 2015 states it was closed on 25 November 1999 and that a fire resulted in the case files being lost.

The victim, in relation to the second incident of torture filed a suit before the Additional District Judge, Srinagar, against the Union of India and the State of Jammu and Kashmir for damages for injuries sustained.

The court found in favor of the victim and confirmed the torture against the victim by the 2nd Dogra Regiment but did not identify specific perpetrators. The court ordered that the victim be given Rs.5,00,000 with interest. The Government of Jammu and Kashmir appealed this decision. Manzoor Ahmad Naikoo received the money ordered.

Third, at the army camp of the 8 Rajputana Rifles, Palhallan in 1996. Manzoor Ahmad Naikoo, while digging a pit in his ancestral orchard to plant trees, found the dead body of a person who had disappeared earlier from a nearby village.

After the body was exhumed, Manzoor Ahmad Naikoo was called to the 8 Rajputana Rifles Camp at Palhallan. He was questioned for an hour on why he had informed others about the dead body and then he was allowed to leave.

15 days later personnel of the 8 Rajputana Rifles arrived at his shop. Manzoor Ahmad Naikoo was asked to leave his shop and in the meanwhile soldiers of the 8 Rajputana Rifles planted *Jamaat-e-Islami* [religio-political organization] literature in his shop. Major Sinha arrived at the shop and told his men to take Manzoor Ahmad Naikoo to the camp.

In the camp, Major Sinha started beating the victim with a cane and accused him of selling *Jamaat-e-*

¹ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. By communication dated 30 November 2013 from Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI dated 14 November 2014.

Islami literature. Manzoor Ahmad Naikoo was detained at the camp for a night. During the night, he was interrogated and asked to reveal all the information he had about his relatives. The victim had no idea why he was being asked for this information as none of his relatives were either militants or in politics.

Next morning, the village Lambardar [Numberdar, de facto revenue authority in the village] came to the camp and met Major Sinha. Major Sinha called Manzoor Ahmad Naikoo into his room and questioned him on why he had informed other people about the dead body he had found, instead of informing the army immediately. The Lambardar pleaded the victim's innocence and he was set free.

Manzoor Ahmad Naikoo gave a statement to the IPTK on 1 March 2012.

The Jammu and Kashmir Police do not appear to have conducted any substantial investigations on FIR no.120/1991 to result in any prosecution of personnel of the 2nd Dogra Regiment despite the passage of 21 years and the confirmation of torture by the Additional District Judge, Srinagar. On the contrary it appears that the case has been closed.

Based on the available documents, particularly the 6 September 2011 Government of Jammu and Kashmir response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], no sanction for prosecution appears to have been sought in this case.

The torture that was inflicted on Manzoor Ahmad Naikoo in 1996, for the third time, is an example of how the persistent impunity allows for the repetitive victimization.

The responsibility of the continued threats, harassment and sustained torture also lies on the inaction of the mechanisms of justice and lack of investigations by the Jammu and Kashmir Police.

Case No. 2

Victim Details

Identity not ascertained [Crime not ascertained]

Alleged Perpetrators

1. Constable Mohammad Yousuf, resident of Sachan [Schichan] Anantnag [Unit not ascertained]

2. Other accused persons

Case Information

First Information Report [FIR] no.102/1991 u/s 3/25 TADA and 3/5 Explosives Act was filed at the Ram Munshi Bagh Police Station on 15 August 1991 for an incident that took place on the intervening night of 14 and 15 August 1991².

The FIR copy provided is unclear but appears to refer to an incident where a grenade was thrown in a house.

The 21 December 2011 communication from the Jammu and Kashmir Police states that case has been closed as chargesheeted against Constable Mohammad Yousuf and other accused persons. By communication dated 22 April 2014 from the Jammu and Kashmir Police a copy of communication dated 22 July 2000 from Superintendent of Police, City East Zone, Srinagar, to Senior Superintendent of Police, Srinagar, was provided. This communication forwards the case file of 108 pages for the purpose of acquiring sanction for prosecution.

The case file has been submitted for accord of obtaining sanction for prosecution on 7 April 2003 and was awaited.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was not received. There exists little information in relation this case. It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir 13 years to investigate and process the case for acquiring sanction for prosecution which apparently helped the perpetrators in evading justice.

Case No. 3

Victim Details

Abdul Rashid Dar [Abduction and Torture]
Age: 45
Occupation: Worker of People's League
Son of: Ghulam Mohammad Dar
Resident of: Kulpora, Pulwama district

Alleged Perpetrators

1. Gurnam Singh, Company Commander, BSF, Bonura Camp, Pulwama district
2. Alawat, Sub-inspector, BSF, Headquarters, Bonura Camp, Pulwama district
3. Lt. Col. Patel, Camp-in-charge, 9 Dogra

² Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 21 December 2011 from the Jammu and Kashmir Police an unclear copy of the FIR was provided. Further information sought through RTI on 15 October 2013. By communication dated 30 November 2013 information was provided that the sanction for prosecution was yet to be received. Further information sought through RTI dated 14 November 2014.

Lettar Camp
4. Major Raju, 9 Dogra Lettar Camp

Case Information

In 1992 [victim does not remember the month or date], the victim was returning from his in-laws' house from Rakh Lettar. On his way, there was a BSF patrolling party passing through the same area. Gurnam Singh, company commander, BSF, Bonura Camp, Pulwama, and Sub-inspector Alawat then abducted the victim from there and took him to their camp [the victim found their names out because he was made to spend a long time in the camp]. One of the army personnel pulled his collar from behind and put his shirt over his face so that he would not be able to see anything. He was then taken for about 2 kms on foot, at which point they reached a river Nilora. Here, they took his shirt off and put his head into the water; they kept repeating the process for the next two hours. Then, they put his shirt over his face once more and took him to Bonura Camp.

Even though the victim was affiliated to the Peoples' League, the BSF personnel who abducted him were unaware of it because they never asked him about any of his affiliations.

At Bonura camp, the victim saw that about 30-35 persons had been abducted. The forces were asking all of them about the whereabouts and weapons of militants. The victim was tortured at the camp continuously for 22 days.

First torture: In the camp, the victim was made to lie on the floor near the opening of a water tank, which was buried under the ground and its opening was at the same height as the floor. Then his head was placed over the opening of the tank and was forcibly immersed into the water tank. During this process, a few BSF personnel stood over the shoulders and back of the victim.

Second torture: The victim was stripped and both his legs were tied and then stretched, by pulling the ropes around his legs; electric wires were attached to his toes, mouth, around the belly and his chest. They then put water on him so that his entire body would get electric shocks.

Third torture: The victim was stripped and hot candle wax was put on his body. The food that they gave him was not edible and was given to him in dirty utensils.

The victim was kept in the camp for four and a half months and then was shifted to JIC Pulwama.

At the JIC Pulwama, the victim was kept in custody for six months. However, he was not subject to any torture there. He was charged under the Public Safety Act [PSA] while in the JIC.

Six months later, he was taken to Central Jail and kept there till 1996. The victim was not subject to any torture

in the jail. He was released after the completion of his sentence on 3 June 1996.

In 1997 [probably in January], the victim was arrested again. It was the month of Ramzan and the victim was in *Aitikaf* inside the masjid. Major Raju [a Sikh], 9 Dogra Lettar Camp came and arrested him from there. He was released the same day. He returned to the masjid, resumed Aitikaf and completed it on Eid, after which he returned home.

At 9:30 pm that day, personnel of 9 Dogra Lettar camp raided his house. Lt. Col. Patel was the camp-in-charge and led the personnel who picked him up. The victim's hands were tied behind his back and he was taken to Chokur, Chudribagh on foot, almost 2 kms away from his house.

At Chudribagh, the victim was put in a tractor and was taken to the camp. They reached the camp at 12 am. From then on till the morning Azaan, he was tortured. They would give him electric shocks, put cloth in his mouth and put water on his face. After sunrise, the victim was taken to Kalpora Chowk and from there he was dragged home naked on the snow.

Right after reaching home, they took him back to the camp and kept him there for another 9 days. He was tortured once more – his head was immersed in water that was mixed with chili powder. The victim was kept in a bunker and there was nothing by which he could warm himself.

After a few days in the camp, a second officer Ram Dutt approached the victim and told him that he was innocent. He took him near a "*bukhar*" where the victim was able to warm himself. Ram Dutt told the victim "as soon as you will be released, you should shift to a different place to live". When the victim was released, he did exactly that and shifted to Srinagar. He lived there for 12 years.

But during these years, his father and brother were picked up by personnel of the 9 Dogra Lettar camp, taken to the camp and interrogated there. The father of the victim was told to produce the victim or else they would kill the entire family.

The victim neither lodged an FIR nor did he approach the court because of the threat of the Army to kill their family.

As per the victim, he was arrested many times by the 9 Dogra army personnel and it was all happening on the instructions of the Lt. Col. Patel. He has done the same with many other inhabitants of the village.

The victim, Abdul Rashid Dar, gave the above statement to the IPTK on 7 April 2015.

The victim's statement is clear and cogent evidence is presented of the torture by alleged perpetrators 1-3. The allegations warrant further investigation. The role

of alleged perpetrator no. 4 is less certain. Certainly as a Major ranking officer, and particularly considering he also arrested the victim, there is a strong basis to investigate his role in either the actual operation against the victim or his knowledge thereof. The nature of the torture also suggests that Major Raju would have been aware of what was being done to the victim.

Case No. 4

Victim Details

Mohammad Shafi Ahanger [Torture]

Age: 42

Occupation: Black Smith, Welding work [affiliated to the Al-Jehad, Muslim Janbaz Force [1990-1993] and the Tehreek-ul-Mujahideen [1993-1995]]

Son of: Ghulam Nabi Ahanger

Resident of: Rishi Bazar, Islamabad district

Alleged Perpetrators

1. Sujan Singh, 2 Rashtriya Rifles [RR], Khanabal Camp
2. George [operational name], 2 Rashtriya Rifles [RR], Khanabal Camp

Case Information

In January 1993, personnel of 2 Rashtriya Rifles [RR], Khanabal Camp, arrested the victim while there was a catch and kill operation going on. A crackdown was imposed in the area, at which time the victim was at his home. The victim also came out of his house as the others.

George [operational name] and Sujan Singh of the 2 RR at Khanabal camp were commanding the entire operation of the crackdown.

The inhabitants of the area were all assembled at Lal Chowk, Islamabad. Then, approximately 9 persons were picked up and taken away by the army. Javaid Ahmad Raga, Mushtaq Ahmad Raga, Nazir Ahmad and five others along with the victim were taken away during the crackdown at around 12 pm. They were taken to the 2 RR Khanabal camp.

When they reached the camp, they were kept in the grounds. They were then beaten with lathis; 8-10 army personnel beat each boy for at least 2-3 hours. Then, they were taken to a room in the camp, from where army personnel took them to the interrogation cell one by one.

When the victim was taken to the interrogation cell, he saw Sujan Singh sitting there, commanding his personnel to torture them; sometimes, he himself beat the victim. [The victim came to know about his name in the camp through other army personnel who were of good nature and sometimes gave him tea but he doesn't remember their names now.]

At around 7 pm in the torture cell, the victim was stripped and made to lie on the ground. His hands and legs were tied with a rope. Thereafter, they rolled an iron roller over his body. To add to the weight of the roller, a few army personnel would often stand on top of it. They then electrocuted his private parts, as a result of which he used to faint. After this, they put a cloth over his face and took him to the bathroom and put his head in the water tank. They would also put electric wires in the water tank so as to electrocute him through the water. One army person would stand on his back so that he could not take his head out of the water tank. Sujan Singh too electrocuted the victim.

Then the victim was taken back to the room at about 11 pm, where he was kept for 3-4 hours. Thereafter, at about 2 am, the victim, and the others who had been picked up, heard some noise from outside. 30-40 army personnel entered their room [they seemed drunk]; they took them out, stripped them and dragged them on the snow. George was amongst these army personnel who were torturing them. They then beat them using lathis, and forced them to do "*Kaanpakdi*". They also cut his abdomen using a knife, making an 8-9 inch cut on his abdomen in the process. Only then was he taken for medical treatment.

This torture continued on and off for 10 days. Then the victim was released after 15 days. On the last day at the camp, an army officer told the victim that they were going to kill him. They put "*pehnan*" over his head, took his wallet and wrist watch, and then took him to a police line.

On the same day, the victim was released from the police line. Police informed the family of the victim to take him home. The victim was not able to walk because of the interrogation; he also couldn't continue his studies, as he had been imprisoned.

Five months later, the victim was arrested again. It was probably the army of High Ground camp, Islamabad. They cordoned his house, picked him up, and took him to the house of a Kashmiri Pandit. The house was close to his. They tortured him and beat him. He was released the same day near the post office. The cousin of the victim, Mudasir Ahmad Ahanger, who lived close to the post office, saw him when he was released and took him home. After this round of torture, the victim remained on the bed for 5-6 days and was unable to walk.

In 2008, Jammu and Kashmir police from Sherbagh Police Post took the victim in on a stone pelting case. SHO Irshad kept him in custody for two days. Even though the victim had been arrested while stone pelting, SHO Irshad told him that he would charge him for hurling a petrol bomb on Police Post Sherbagh.

In 2011, Jammu and Kashmir police personnel, including Ali Mohammed and others, again picked up the victim. They took him to Sadder Thana and kept

him for 10-15 days for the 2010 stone pelting case.

The victim, Mohammad Shafi Ahanger, gave the above statement to the IPTK on 25 April 2015.

The victim's statement is clear and cogent evidence is presented of the torture by the alleged perpetrators. The allegations warrant further investigation.

Case No. 5

Victim Details

Nazir Ahmad Zarger [Abduction, Torture]

Age: 40

Occupation: Shopkeeper [poultry business] [he was affiliated with the Hizbul Mujahideen]

Son of: Bashir Ahmad Zarger

Resident of: Dangarpora, Mattan Chowk, Islamabad district

Alleged Perpetrators

1. Major Pradhan, Rashtriya Rifles [RR], Khanabal Camp, Islamabad district

Case Information

In January/February 1993, army from the RR Camp cordoned the area around the house of the victim. The victim is not aware of the RR battalion. He was taken to the Khanabal Camp, where there was a Major Pradhan. But the one who picked him up was a renegade with the army [his face was covered and so the victim could not identify him]. During the cordon, he claimed that the victim was a militant, and on that basis, he was picked up and taken to Khanabal Camp.

Major Pradhan was not present during the cordon. The victim only found out about him once he got to the camp. He was kept in the grounds of the camp in the snow, along with 11 other boys who had been picked up on the same day. They were stripped right there and beaten; they were kept on the ground for 2-3 hours. After this, all the 12 boys were kept in a single room. It was hard to adjust for all of them to be in that small room. Then, within the room itself, they were stripped again and their private parts were electrocuted; wooden logs were rolled over their body, and they were beaten too. Their legs were stretched by army personnel. This torture continued regularly for 10 days.

Major Pradhan was the one who was ordering his personnel to torture them. They were tortured many times in his presence and at his orders.

2-3 days into custody, during one torture session, the victim was hit on the head with a spade by a army officer. The blow caused serious injury to his head and brain, which resulted in him stammering. At the time of the blow, he also bled profusely.

After 10-12 days in the camp, the victim, along with a few otherboys, was shifted to the Old Airport camp at Rangreth. He was tortured there again, where his legs and abdomen were burnt. They would burn polythene off his body. He was kept there for over 2 months.

In 2008 and 2010, the victim continued to be harassed by the army. They would come to his shop as well as home to keep surveillance over his activities. His neighbors once took him away to another locality to protect him, as they feared that the army might hurt him or kill him. Army personnel would remain near his shop in civilian clothes. In 2010, few army personnel who were outside his house did not allow him to leave his house.

The victim, Nazir Ahmad Zarger, gave the above statement to the IPTK on 25 April 2015.

The victim's statement is clear, and cogent evidence is presented of the torture by the alleged perpetrator. The allegations warrant further investigation.

Case No. 6

Victim Details

Shuja Hussain Rafiqui [Torture]

Age: 40

Occupation: Shop owner Medical Shop [he was affiliated with the Ikhwan-ul-Muslimeen (1993)]

Son of: Ghulam Mohiuddin

Resident of: Bakshi Abad, Islamabad, Islamabad district

Alleged Perpetrators

1. Sujan Singh, Subedar, 4 Rashtriya Rifles [RR], High Ground Camp
2. R.S. Kataria, army Officer [probably a Lt. Colonel], Khanabal camp
3. "Sham Commander", Government Gunman [Ikhwan]
4. "Vitt" Ganai, resident of Malakhnag, Government Gunman [Ikhwan]

Case Information

On 4 January 1993, the victim was going to school [Islamia High school]. On the way to the school, at Mattan bus stand, a few army vehicles stopped and a few personnel came out along with a renegade alias "Sham Commander", resident of Nai Basti, Islamabad. The renegade and the victim knew each other as the renegade earlier belonged to Al Jihad. He later surrendered and started working for the army. The renegade and the victim were once together in action against the CRPF too. The army stopped the vehicle because "Sham Commander" identified the victim and told the army that he belonged to militancy. The army picked up the victim and took him in a vehicle to the High Ground Camp of 4 RR.

In the camp, Sham Commander asked the victim about the action against CRPF which they had undertaken together and forced the victim to admit that he was a militant. After this, Subedar Sujan Singh, along with his personnel, tortured the victim. The victim's body was electrocuted along with his private parts. The victim was beaten with a rope and a roller was rolled over his body. The legs of the victim were also stretched. Many army personnel trampled his body. This torture continued for 2-3 hours. When the victim asked for water, Sujan Singh urinated in front of him and asked the victim to drink it. After two days, the family of the victim approached the camp and requested them for his release. Then he was released.

After the release, Sujan Singh continued to harass the victim and wherever he would see him he would ask him where he was and sometimes slap him also. Sujan Singh visited the school of the victim many times to check whether he was in his school only or not.

After 5-6 months, Sujan Singh picked up the victim again for no reason and took him to Khanabal Camp. R.S. Kataria [probably Lieutenant Colonel] was also with Sujan Singh when they picked the victim up. A renegade "Vitt Ganai", resident of Malakhnag, had informed the army that the victim used to be with the militants. This time the victim was tortured the entire day – his body was rolled for hours and his body and private parts were electrocuted. His legs were also stretched. This time the victim was kept for one day only and was released in the evening.

Yet, even then Sujan Singh remained after him. Once, he told the victim to work for him. The victim refused. Sujan Singh told him that he would arrest him. The victim replied that if he had any evidence against him of being a militant then he could arrest him. This harassment, including raiding the house, stopping on the road, continued till 2005, after which it stopped.

The victim, Shuja Hussain Rafiqui, gave the above statement to the IPTK on 9 May 2015.

The victim's statement is clear, and cogent evidence is presented of the torture by the alleged perpetrators. The allegations warrant further investigation. The role of both the Ikhwan appears to be only in terms of providing information to the army and in that sense their responsibility would not be the same as the army officials.

Case No. 7

Victim Details

Abdul Rashid Pandit [Abduction, Torture]
Age: 40
Occupation: Businessman [he was affiliated with the Muslim Janbaaz Force]
Son of: Mohammad Ramzan
Resident of: Pandit Mohalla, Duroo, Sopore,

Baramulla district

Alleged Perpetrators

1. Major Gurpal Singh, Nowgam Camp

Case Information

In April 1993, the army of the Nowgam Camp [victim does not know the battalion] arrested the victim. The victim was associated with the Muslim Janbaaz Force. Major Gurpal Singh tortured him. He was detained for two years and five months. He was arrested at Nowgam; from there, he was shifted to Kot Bhalwal Jail. He was beaten with steel rods and wooden batons. His legs were stretched and he was forced to overdrink water. A roller was also rolled on his body. His head was dipped in a mixture of water and chilly powder. He was kept naked. The detainees were provided some medical help but the medical assistance was only a namesake. His relatives were allowed to meet him after two to three months. The victim was not tortured at Kot Bhalwal.

Everyone knew Major Gurpal Singh, as he was very notorious because of how oppressive he was. Gurpal Singh tortured the victim at Nowgam camp. He gave electric shocks to the victim in the head about 10 times. The detainees were tortured for five consecutive days in the morning and evening. Each time, he was tortured for about half an hour.

The victim's family members were arrested and tortured. The army and other security agencies also wanted his brother to trace his whereabouts. The victim still needs medical help because he was severely tortured. His livelihood has sustained setbacks because he can't work or earn. He suffers general weakness. For the last one year, the army does not call him as frequently as earlier. He is supposed to report to the camp on some special occasions such as Independence Day or Republic Day or whenever any militant activity takes place.

The victim, Abdul Rashid Pandit, gave the above statement to the IPTK on 20 October 2014.

The victim's statement is clear, and cogent evidence is presented of the torture by the alleged perpetrator. The allegations warrant further investigation.

Case No. 8

Victim Details

Mohammad Shafi Hajam [Torture]
Age: 40
Occupation: Barber [he was affiliated with the JKLF]
Son of: Abdul Rahim Hajam
Resident of: Feroz Shah Mohalla, Bijbehara, Islamabad district

Alleged Perpetrators

1. Malik, Officer, Central Bureau of Investigation [CBI], Bijbehara, Islamabad district
2. Commander at the Rashtriya Rifles [RR] army camp, SICOP, Bijbehara [as in 1993] [Referred to as "Singh Sahib"]

Case Information

In 1993, there was a cordon in the area around the victim's shop. CBI officer Malik, who used to work and investigate matters in Bijbehara, had informed the army that militants visited the victim's shop for haircuts and shaves. As a result, there was a cordon, in which the army picked him up from his shop, along with another person of the same village, Bashir Ahmad Wani, son of Abdul Rehman Wani.

They were both taken to the Rashtriya Rifles [RR] SICOP camp [the victim does not remember the battalion number]. They were kept there for one night and tortured. A "Singh Sahab" was the Commander at the camp. They were stripped and their bodies, including private parts, were electrocuted. They were forced to urinate on the electric heater so that the current would pass through their private parts. They tied their penises with ropes and then pulled them.

During the torture, Malik, the CBI officer, questioned them about weapons. Even though they initially denied having any knowledge, after being tortured for so long, they said that the weapons were in a ditch next to the victim's shop. The next morning, they were taken to the shop. The ditch was filled with human refuse. They made all nearby inhabitants and shopkeepers enter the ditch. The victim too was forced to go inside and bring out the weapons, which weren't there. They were made to search from 9 am till 5:30 pm but they couldn't find anything. Consequently, Malik banged the victim's head against a rock and broke some of his teeth near the ditch itself.

They were then taken back to the camp and the torture resumed. Their bodies were electrocuted; they were beaten and were forced to gaze at a high-voltage lamp. This happened for 4-5 days, after which, they were shifted to the Bijbehara police station. They were released after being kept in the police station for one day.

Six months later, the victim was again picked up; this time, he was taken by the SOG and the BSF to HMT camp. The victim doesn't know the name of the SOG or BSF personnel who picked him up that day. In the camp, he was again tortured on and off for four days. He was then shifted to the SOG camp at Chandpur in Harwan. Ikhwan from Srinagar and some BSF personnel shifted him. There, he was tortured once more. Six days later, he was handed over to the Bijbehara police station.

Thereafter, the victim was released. Since then, the victim has always had to report at the police station to

record his presence. The torture led to deterioration of his health. The doctor has recommended that he use a waist belt while walking or doing any work. He continues to be under treatment.

The victim, Mohammad Shafi Hajam, gave the above statement to the IPTK on 23 April 2015.

The victim's statement is clear, and cogent evidence is presented of the torture by the CBI official Malik. While it is unusual for a CBI official to be involved in "interrogations" at an army camp, the allegations warrant further investigation.

Under international criminal law principles of command responsibility it is clear that the commander of the camp – "Singh Sahab" – would at the very least be indicted for failing to take action following presumably knowing of a crime taking place in his camp i.e. a location with personnel under his effective control.

Case No. 9

Victim Details

Nazir Ahmad Sheikh [Abduction, Wrongful Confinement and Torture]

Age: 35

Son of: Abdul Jabar Sheikh [deceased]

Resident of: Yahma, Mawar, Handwara, Kupwara District

Alleged Perpetrators

1. Major Multani Veer Singh, 14th Dogra Regiment, Headquarters, Army, Langate

Case Information

On 31 October 1994, Nazir Ahmad Sheikh was picked up on his way to the market by army personnel belonging to the 14th Dogra Regiment. He was accused of being a militant and taken to the camp situated at Qalamabad, Mawar and severely tortured.

After eight days, he was taken to the 14th Dogra Headquarters at Langate. There he was severely tortured for another ten days. Nazir Ahmad Sheikh was taken to the army headquarters at Baramulla for two days and from there to the Badami Bagh Cantonment for ten days for treatment. Nazir Ahmad Sheikh was asked to leave the Badami Bagh Cantonment. As a result of the torture Nazir Ahmad Sheikh lost both his legs, from the knees down, and four fingers of his left hand.

Nazir Ahmad Sheikh states that the torture was conducted mostly by the Major Multani Veer Singh, who was also responsible for picking him up.

First Information Report [FIR] no. 54/1995 u/s 325 [Grievous hurt] Ranbir Penal Code, 1989 [RPC] was

filed at Handwara Police Station on 12 April 1995 by the mother of the victim Khatija Begum³. The FIR does not name Major Multani Veer Singh but does refer to the 14th Dogra Regiment, Camp Langate, as being responsible for his arrest and torture.

The State Human Rights Commission [SHRC] was approached on 31 March 2003 and the final decision was issued on 23 June 2003. The SHRC received a report from the Inspector General of Police [IGP], Kashmir. This report confirmed the torture but stated that this was done by “unknown Army personnel”. This report also stated that Nazir Ahmad Sheikh was picked up on 31 October 1994. The SHRC also noted that the investigation was ultimately closed by declaring the perpetrators as untraced as the investigations were unable to identify the persons responsible for the torture of Nazir Ahmad Sheikh. Based on this information, the SHRC recommended Rs.2,25,000 compensation and recommended the Government of Jammu and Kashmir to consider Nazir Ahmad Sheikh for employment for disabled and handicapped persons. In response to a RTI on Home Department empowered committee on SHRC recommendations, the Home Department by communication dated 24 March 2014 provided information on other cases, including the instant one. It was taken up in the 8th meeting on 23 November 2009 and 1st meeting on 1 April 2009. In the first meeting the Home department suggests that the circumstances of the case are unclear and the Superintendent of Police [SP] report before the SHRC and further information from the CID should be sought. But, in the 8th meeting it was stated that the requisite and due compensation of Rs. 75, 000 was already paid. Further, in both, there is a reference to the SHRC order recommending only 1, 50,000. But, in both cases, the reference is to a complaint by another person – Jennifer Y. Gallari of the United State on behalf of the victim and another person.

Nazir Ahmad Sheikh filed a petition before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 640/2003] for the implementation of the SHRC recommendations minus Rs.75,000 which had already been received and an additional Rs.1,00,000 for the non-payment of ex-gratia government relief due⁴. The Deputy Commissioner [DC], Kupwara sought that the petition be dismissed as the SHRC recommendations were not mandatory as Rs.75,000 as due had already been paid. On 12 November 2008, the final order was passed. The High Court stated that while Rs.2,25,000 was on the “lower side”, it must be paid to the victim [Rs.75,000 had already been paid by the time of this order].

Nazir Ahmad Sheikh has received Rs. 2,25,000 but

has not received any employment.

Subsequently, another petition was filed before the High Court [OWP 976/2011] for the completion of the investigations against the alleged perpetrator and for compensation of Rs.50,00,000⁵. Notice was issued on 9 August 2011. Superintendent of Police [SP], Handwara responded to the petition on 14 October 2011 and stated that the case was closed by declaring the perpetrators as untraced, as the perpetrators of the crime could not be ascertained.

The Ministry of Defence and the Commanding Officer of the 14th Dogra Regiment submitted joint objections. It was stated that no officer by the name “Major Multani Veer Singh” was ever posted in the 14th Dogra Regiment during the relevant time. The unit itself was present. Further, that the allegation were baseless.

The petition remains pending.

Nazir Ahmad Sheikh gave a statement to the IPTK on 2 January 2012.

The FIR specifically indicts the 14th Dogra regiment for the abduction and torture of Nazir Ahmad Sheikh. But, before the SHRC the police submitted that the complaint filed was against “unknown army personnel”.

This misrepresentation of the police before the SHRC, when considered along with the final closure of the case, and the bailing out of the 14th Dogra Regiment and the alleged perpetrator, suggests that the police was involved in a cover up to protect the army. This requires to be investigated and action needs to be taken against the police officials involved in the investigations of the case and the then IGP, Kashmir, who misrepresented the facts before the SHRC.

Case No. 10

Victim Details

Abdul Rashid Lone [Assault]
Occupation: Presiding officer, Court of Munsif, Bandipora

Alleged Perpetrators

1. Major Dharamandra Singh, 10 Bihar Regiment, Army

Case Information

3 Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. By communication dated 9 December 2013 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI dated 14 November 2014.

4 Information on the petition number was sought through RTI on 2 July 2012. Information was provided.

5 Information on the petition number was sought through RTI on 2 July 2012. Information was provided.

First Information Report [FIR] no.81/1994 u/s 384, 353 [Assault / Criminal force to deter public servant from discharging duty] Ranbir Penal Code, 1989 [RPC] was filed at the Sumbal Police Station.⁶ The 9 May 2012 communication from the Jammu and Kashmir Police stated that this case was sent to District Police Office, Baramulla for accord of sanction vide the then Sub-District Police Office Bandipora's letter no.C-5/95-4784-85 dated 18 December 1995.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was not received.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under AFSPA, stated on 6 September 2011 in relation to this case that sanction was sought on 23 September 1999 was awaited.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir took five years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice.

Further, the available documents do not suggest that even a court-martial was conducted in this case by the army. It needs to be ascertained whether the Jammu and Kashmir Government has at all sent the case for sanction for prosecution to the Ministry of Defence and whether the Ministry of Defence has misplaced the case file. At least after the 2009 affidavit by the Ministry of Defence, the Jammu and Kashmir Government should have considered re-sending the case or clarifying when and how the case was sent.

In any case, after providing this information before the High Court of Jammu and Kashmir in 2009 and also in 1994 after the case was filed against the personnel of the army the Ministry of Defence seems to have cared very little about the Jammu and Kashmir Police investigations or in instituting a process for delivering justice.

Case No. 11

Victim Details

Name: Mehrajuddin Bhat [Torture]
Son of: Abdul Rashid Bhat
Resident of: Marazi Mohalla, Tantray Pora, Palhalan, district Baramulla

Alleged Perpetrators

1. Captain Vishal Dhobi, Wusan army Camp
2. Kuldeep, Deputy Superintendent of Police [DSP], Special Operations Group [SOG], Jammu and Kashmir Police, operating from Palhallan army camp
3. Surjeet, Assistant Sub-Inspector of Police [ASI], Special Operations Group [SOG], Jammu and Kashmir Police, operating from Palhallan army camp
4. Rajendra, Special Operations Group [SOG], Jammu and Kashmir Police, operating from Palhallan army camp

Case Information

In 1992, Ghulam Hassan joined Hizbul Mujahadeen and went to Pakistan for arms training. Since then the family was harassed by various agencies of the armed forces. Between 1992 to 1994 army personnel of Hyderbaig Camp continuously raided his house. His brother Mehrajuddin, the victim, and father Abdul Rashid were taken many times during raids by the army of Palhallan Camp. Each time they were detained for days together. At the camp, they were beaten and were forced to do manual labour.

In 1994, after the establishment of an army camp in Palhallan, they were detained at this camp quite often. Both father and son were picked up by Special Operations Group [SOG] personnel Surjeet and Kuldeep. Mehrajuddin was detained for 7-8 days. At the SOG camp, a Munshi known by the name Rajendra tortured him. He tied his hands using a rope, hung him from a height and applied a roller over his legs. He was also given electric shocks by connecting electric wires to his mouth and feet. Around 5-6 SOG personnel trampled him under their feet.

In 2005, Mehrajuddin was called to the army camp at Wusan. They would call anybody to the camp by sending a handwritten note through a civilian. Once, Mehrajuddin decided not to go to the camp and the army sent 12 handwritten chits on the same day. On the same evening his father Abdul Rashid Bhat was picked by the army from their house. The next day Mehrajuddin went to the camp and handed himself over to the army in exchange for his father's release. He was detained there for three days and was beaten by 3-4 army personnel and a roller was applied to his legs. Mehrajuddin recalled that it was Captain Vishal Dhobi, known as Kaloo in the village, who had tortured him. While beating Mehrajuddin, he had told him his name. He had also told Mehrajuddin that "you are responsible for any militant action from Narbal to Sangrama".

⁶ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 9 May 2012 from the Jammu and Kashmir Police an unclear copy of the FIR was provided. Further information sought through RTI on 15 October 2013. By communication dated 20 November 2013 from Jammu and Kashmir Police it was stated that the CD file stands submitted to ZPHQ for accord of sanction. Further information sought through RTI dated 14 November 2014.

Mehrajuddin Bhat gave the above statement to the IPTK on 21 July 2015.

The victim's statement is clear, and cogent evidence is presented of the torture by the alleged perpetrators on two separate occasions. The allegations warrant further investigation.

Case No. 12

Victim Details

Shakeel-ur-Rehman [Torture]

Aged: 47

Occupation: Government Employee.

Son of: Abdul Rehman

Resident of: Pattan, Baramulla

Alleged Perpetrators

1. Major Ajit Singh alias Aziz Gharwal, Gharwal Regiment, Palhallan camp
2. Colonel A.K. Gaur, Commanding Officer, 10 Bihar Regiment, Hyderbaig Camp, Pattan
3. Major Gupta, 10 Bihar Regiment, Hyderbaig Camp, Pattan
4. Kuldeep, Deputy Superintendent of Police [DSP], Special Operations Group [SOG], Jammu and Kashmir Police

Case Information

In the month of 1994, the victim was picked up by personnel of army's Gharwal Regiment camped at Hyderbaig during a crackdown in Pattan area. The crackdown was being headed by one Major namely Aziz Gharwal which was possibly the nickname of the said officer. During the crackdown the army had established a temporary interrogation Centre at Government School Pattan. The victim was taken to that interrogation Centre and was tortured badly. His head was dipped into the bucket of filthy water and made suffocated. Then he was electrocuted by tying an electrode to his private part. During torture the army personnel were telling him that he was associated with Hizbul Mujahideen and were forcing him to share information, but he continued pleading his innocence. Then same day in the evening after a group women protested he was set free.

Then, in July or August 1995, he was picked up again during a crackdown in Pattan area by the personnel of 10 Bihar Army camped at Hyderbaig, Pattan. The crackdown had been launched by Major Gupta and Colonel A.K. Gaur. This time he was picked up because of recovery of some newspapers and salary passbook from his house during door to door search. The newspapers contained the tributary pictures of militants killed in battles with armed forces. The army arrested him on the accusation of being a militant sympathizer. This time after the recovery of said documents, he was called from the parade ground by

Commanding Officer AK Gaur and then taken to his house, where they started to torture him. They took him into one of the rooms of his uncle's house which was close by. The army personnel dipped his head to suffocate him into a bucket of water and they rolled his thighs with a heavy wooden roller, with around 3 army men on each side of the roller. During the torture all his household items were ransacked by army. This time he was tortured for half an hour and was released after nothing erroneous was found against him.

Then between 1996 and 1997, he was constantly harassed by government sponsored gunmen. Among the renegades who harassed him and extorted money from him were Shaheen, Nazir Halwa, Ama Kawa, Adil Khan, Mushtaq Zargar, Riyaz Sada, Mohiuddin Ganaie. The said persons were associated with Muslim Mujahideen and were operating from Palhallan army camp [situated in the houses of migrant Kashmiri Pandits] under the control of Major Liyakat Ali. The said renegades were also associated with three persons namely Haji Abdul Khaliq Bhat of Malpora Pattan, Abdul Majeed Bhat alias Kar of Pattan and Ghulam Mohammad Dhobi, who were brokers and were making people of Pattan area to migrate from Pattan and were making them to sell their properties. Under the control above name persons, there was also one person namely Abdul Rashid Gojri alias Resh Goor who was called village guard and was working with army. Abdul Rashid on the direction of above named Muslim Mujahideen renegades between 1996-1998 used to extort money from the victim on monthly basis, by threatening of dire consequences and intimidating him that he would get him arrested by the army and renegades of Muslim Mujahideen of Palhallan Camp. The said renegades were extorting money from many residents of Pattan area and were also threatening them of dire consequences. Even the then DSP namely Farooq Reshi and another police personnel Mansoor were also actively involved extortion and blackmailing locals.

Then in 1997 in the month of September or October, during one night at 12:00 am the victim's house was raided by Sub-Divisional Police Officer [SDPO] namely Farooq Ahmad Reshi along with his men including his driver namely Mansoor. Then he was picked up. His family members pleaded for his release but police turned a deaf ear to their pleas and pushed away all the women in the family. Then the said police handed him over to Special Operations Group [SOG] group camped at Palhallan. There he along with around 20 other locals, who had also been picked from different villages of Pattan area were kept in a room of the SOG camp. Then same night at about 2:00am he was taken out from the room and then taken to a nearby interrogation center. There DSP Kuldeep himself started to beat him up with bamboo stick. He repeatedly kept on hitting his arms and legs. For about two hours he was beaten by DSP Kuldeep, during which he was asking that one Master Ghulam Nabi Wani, who was a leading, Jamaat-e-Islami

activist, had handed over records and documents of Jamaat-e-Islami group to him. The victim negated the allegations against him and implored for his innocence. After two hours of severe beating he got semi-conscious. In the same interrogation room there was a government gunman namely Gula Lone who on getting pity on the victim requested DSP Kuldeep that he would serve the victim water, but the DSP refused and used abusive words to the gunman. Then he was taken back to the room where other locals were detained. Then after eight days of detention his family was allowed to meet him and then on the 10th day, he was shifted to Joint Interrogation Center Matches Factory Baramulla. There he was kept for 4 days and then approximately on the 15th day he was produced before the SP Operations R.K. Jalla, who in his office chamber punched him on his face and kicked him and said that his family was using police influence for his release. After half an hour of beating and humiliation from SP Jalla, he was sent to Police Station Baramulla, where from he was released in the late evening time.

After his release, he enquired about why he was arrested. He believes it was motivated by the persons namely Haji Abdul Khaliq Bhat of Malpora Pattan, Abdul Majeed Bhat alias Kar of Pattan and Ghulam Mohammad Dhobi, the brokers of the area, who were pushing people for migration from Pattan area and were earning from their properties. Further, after his release the trio visited his house and warned him to migrate from the area to avoid future harassment, which he refused by saying that there was nothing erroneous against him for which he should escape.

The victim gave a statement to the IPTK.

The victim's statement is clear, and cogent evidence is presented of the torture by the alleged perpetrators. The allegations warrant further investigation. The role of SP Operations Jalla in particular needs to be analyzed particularly under the international criminal law principles of command responsibility as he would have had effective control over DSP Kuldeep who administered torture at the SOG Camp, Palhallan.

Case No. 13

Victim Details

Ghulam Mohammad Sheikh [Torture]
Age: 50
Occupation: Labourer
Son of: Ghulam Nabi Sheikh
Resident of: Tantray Pora, Palhallan, Baramulla District

Alleged Perpetrators

1. "Dhandan", Major, Palhallan army camp
2. SS Sinha alias Liyaqat, Major, Palhallan army camp
3. Abdul Rashid Ganai, Government Gunman
4. Latief Mir, Government Gunman
5. Ghulam Mohammad Waza alias Amma Waza,

Government Gunman
6. Ghulam Nabi Bhat, Government Gunman

Case Information

The victim was picked up by army many times during crackdowns. After the establishment of the Palhallan army camp, the victim was taken to the camp many times. He was accused of being informer to militants.

Once during the time of Major "Dhandan" the victim's house was raided by army and government gunmen. They cordoned the victim's house. Army was along with their Major "Dhandan" and the government gunmen were Abdul Rashid Ganai, Latief Mir, Amma Waza and many others. As army raided the victim and his family rushed upstairs and started shouting so that neighbors would listen and come out. But none of the neighbor came out. Army and gunmen broke the door and barged into the house. They went upstairs and brought the family down. The victim was beaten along with his family: his mother Raja Begum [60] and wife Taja Begum [35]. Army took the victim to Palhallan camp and kept him there for 3 days. During these 3 days he was tortured; roller was applied on his legs for about 10 minutes and simultaneously they were asking him about militant whereabouts. Around 8-10 army personnel were in the torture cell torturing the victim. They tortured him for around one hour. After torturing him they took him to the office of the Major and he too asked the victim about militant whereabouts. He also beat the victim with a belt. On the fourth day they released him.

Once a government gunman named Ghulam Nabi Bhat came to the house at around 7:00 pm and said that Major Liyaqat wanted the victim to appear in the camp. The victim went to the camp along with the government gunman. The army were also along with him. Other persons were also picked up on the way. In the camp they beat the victim and put his head in water. One army person was holding his head to put it in the water and another army person was putting electric wires into the water to give him electric shocks. This torture was done to him for around 10 minutes. On the next day he was released.

The victim gave the above statement to the IPTK on 24 July 2015.

The victim's statement is clear, and cogent evidence is presented of the torture by the alleged perpetrators. The allegations warrant further investigation.

Case No. 14

Victim Details

Ghulam Hassan Khan [Abduction, Torture]
Age: 44
Occupation: Shopkeeper
Son of: Ghulam Nabi Khan
Resident of: Palhallan, Pattan, Baramulla district

Alleged Perpetrators

1. Major SS Sinha, Palhallan army camp
2. Mohan Singh, Deputy Superintendent of Police [DSP], Special Operations Group [SOG], Jammu and Kashmir Police, Baba Taing camp
3. Ghulam Nabi Dar, Government Gunman
4. Ghulam Ahmad Yatoo, Government Gunman
5. Abdul Rashid Malla, Government Gunman
6. Mohammad Shabaan Kawa, Government Gunman

Case Information

Ghulam Mohammad Khan, uncle of the victim, was not only an active Hizbul Mujahideen militant but also a commander, due to which the family had to face constant raids and torture.

In 1996, the army killed Ghulam Mohammad Khan in an encounter. After a break of 8 months, the victim was accused of storing weapons. The army headed by Major S.S. Sinha along with government gunmen Ghulam Nabi Dar, Ghulam Ahmad Yatoo, Abdul Rashid Malla and Mohammad Shabaan Kawa raided the house; they mixed the whole ration of the house at one place. Major SS Sinha also took a carpet from the house of the victim. Later, after one year, when Ghulam Hassan invited him on his marriage, he returned it. He invited the Major so as get rid of this harassment.

In the absence of the victim in the house, his father Ghulam Nabi Khan was taken to the Palhallan army camp. He was tortured there, due to which his eyesight weakened. After two days, Ghulam Hassan went to the camp, he handed himself over to the army, after which they released his father.

The victim was taken under custody and was tortured due to which he lost his conscious. He was kept in water for two days till he woke up. After that the army dug a mud hole and placed his body inside the mud hole leaving his head outside. They placed rifles around him. Then Major S.S. Sinha asked him, "What are you going to do now?"

Every time his family visited the camp, they were sent back with the response that, "your son ran away". They even destroyed their house and used to take away their belongings.

In 1997, DSP Mohan Singh, heading the SOG at Baba Taing picked him up. He was taken to the SOG camp and kept there for two days. He was tortured; a wooden roller was applied on his legs and electric

shocks were given to him. Besides this, he was beaten ruthlessly. But he was tortured on the first day only. He was tortured till he lost consciousness. Then after two days, he was released. After that, he was never harassed any more.

The victim, Ghulam Hassan Khan, gave the above statement to the IPTK on 15 July 2015

The above witness statement provides evidence of different incidents of torture. Major Sinha and DSP Mohan of SOG are indicted by the statement for two separate incidents of torture. The statement is unclear on whether the government gunmen were actually present during the incident of torture with Major Sinha though they are stated to have been with him on a prior raid. Further investigations of these allegations are mandated.

Case No. 15**Victim Details**

Ghulam Qadir alias Kanni [Abduction]

Alleged Perpetrators

1. Mohammad Ashraf Khan [Operational names Umar / Bhai Jan], son of Habibullah Khan, Government Gunman [Ikhwan]
2. Parvez Ahmad Querishi [Operational name: Shahbaz], son of Aftab Ahmad, Government Gunman [Ikhwan]
3. Ashraf Ali Beig, son of Ghulam Rubani, Government Gunman [Ikhwan]
4. Ghulam Hamdum Beigh, son of Ghulam Rubani, Government Gunman [Ikhwan]
5. Mohammad Amin Sheikh [Operational name: Manzoor], son of Habibullah, Government Gunman [Ikhwan]
6. Major Avtar Singh, 103rd Battalion Territorial Army, deployed at Rawalpura, Srinagar

Case Information

First Information Report [FIR] no.115/1996 u/s 364 [Kidnapping/Abducting to murder], 109 [Abetment], 120-B [Criminal Conspiracy] was filed at the Shergari Police Station⁷. The FIR states that on 18 February 1996, Ghulam Qadir was picked up from his home by Ikhwan. An extortion demand of Rs.1,50,000 was made. The persons accused were Shahbaz [Rajkashi], Ashraf Ali and Hamdani. By communication dated 22 April 2014 from the Jammu and Kashmir Police information was provided that investigation stands concluded as challan and is pending production.

⁷ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. By communication dated 2 June 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

As per a letter dated 23 October 2000 from the Senior Superintendent of Police [SSP], Srinagar to the Deputy Superintendent of Police [DSP], and a member of the Special Investigating Team, the case was closed as chargesheeted against the alleged perpetrators but was pending production as Major Avtar Singh had not been apprehended.

Various attempts were made to extradite Major Avtar Singh from Canada, and then the United States, where he had fled after being allowed to acquire a passport.

On 9 June 2012, at around 6:30 am California time, Major Avtar Singh called police authorities in the city in which he was residing and informed them that he had killed members of his family and was going to kill himself.

Subsequently, the dead bodies of Major Avtar Singh and his family were found by the police authorities at Major Avtar Singh's residence.

The Jammu and Kashmir Police position that the case against the alleged perpetrators was not proceeding because Major Avtar Singh could not be arrested is an indictment of the Jammu and Kashmir Police who do not appear to have sought to use any of their coercive powers to arrest Major Avtar Singh.

Further, available documents from the Ministry of Defence do not mention this case at all, thereby suggesting that the case was never received on their end with regard to Major Avtar Singh.

It needs to be ascertained whether the Jammu and Kashmir Government has at all sent the case for sanction for prosecution to the Ministry of Defence and whether the Ministry of Defence has misplaced the case file.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

With the recent death of Major Avtar Singh, it has been ensured that no justice, by the rule of law, will ever be meted out to him. The processes of justice have therefore ensured impunity. Yet, prosecution can still proceed against the other alleged perpetrator, where sanction before prosecution is not required.

Case No. 16

Victim Details

Fayaz Ahmed Bhat [Torture]

Age: 36

Occupation: Farmer

Son of: Ghulam Mohammad Bhat

Resident of: Tantray Pora, Palhalan, Pattan, District Baramulla

Alleged Perpetrators

1. Major Sinha [Operational name Liyaqat Ali Khan], Palhalan army Camp
2. Malik, army Officer, Palhalan army Camp
3. Sher Khan, Government Gunman [deceased]
4. Mohammed Shabaan Kawa, Government Gunman
5. Saeb Hajam, Government Gunman

Case Information

The brother of the victim had been a militant with the Hizbul Mujahideen. As a result the family of the victim was frequently targeted. Fayaz Ahmed Bhat, Mustaq Ahmad's brother, was picked up and taken to the Palhallan army Camp, under the authority of Major Sinha [operational name: Liyaqat Ali Khan] and Officer Malik of the same Camp.

The victim was kept at the camp for 2-3 days at a stretch, then released, only to be captured again. They tortured him and the others in custody in various ways: electric currents through toes, they stripped him and his brother in front of each other, hung him upside down for 20-25 minutes continuously and put ice and freezing water over their body. Two to three people simultaneously would beat the victim with sticks for about 10 minutes. They would then stop for an hour and resume the beating. They would heat up an iron rod and place it over their bodies. Major Sinha forced the victim to sit on a stove and burnt him, for others they put petrol into their anus, and passed electric currents through the genital area. They would release him after 2-3 days but then they would pick him up again and the cycle kept going on for 1-2 times a month, sometimes even 1-2 times a week.

Government gunmen like Sher Khan, Mohammed Shabaan Kawa and Saeb Hajam also tortured him. They would regularly pick him up, threaten him and ask him for money. After the army officers had beaten him, they would beat him further with sticks in the same army camps.

The brother of the victim, Mohammad Ismail Zargar, gave the above statement to the IPTK on 9 January 2015.

The witness statement is clear, and cogent evidence is presented of the torture by the alleged perpetrators. The allegations warrant further investigation.

Case No. 17

Victim Details

Mushtaq Ahmad Wagay [Torture]

Age: 40

Occupation: Milkman

Son of: Ghulam Qadir Wagay

Resident of: Goriwan, Bijbehara, Islamabad district

Alleged Perpetrators

1. Pillay, Officer, Corps of Military Police [CMP], Badami Bagh Cantonment, Srinagar

Case Information

In March 1996, the victim was at his maternal aunt's house at Pathar Masjid, Zainakadal, Srinagar. At about 1 pm, the army from Badami Bagh Cantonment raided the house. The victim's friend Feroz Ahmad, who was the only one aware about the whereabouts of the victim, gave that information. The victim had planned to leave, the next day, for Pakistan, along with family. But his friend informed the army and he was arrested. The house was raided and the victim was taken to the transit camp at Badami Bagh.

In the camp the victim was tortured – a roller was rolled over his body and a wire was put in the hole of his penis to electrocute him. The opening of a bottle was put in his anus and then it was broken, leaving the broken part behind inside his anus. Then they rolled the roller over it. This torture continued for 15 days and the torture was done for one hour in the morning and one hour in the night.

After 15 days, the victim was shifted to the Old Airport, Rangreth. There too, the victim was tortured at 6 am in the morning and at midnight, and the torture was done for 1-2 hours. The victim was kept in this camp for 15 days and then shifted back to Badami Bagh – at the Interrogation Centre. It was under CMP. When the victim was taken there, on the first day during the interrogation a rod was penetrated through the right leg of the victim. No treatment was provided to him for one month. It was some officer called Pillay who had penetrated the rod and was torturing the victim. The victim was mentally tortured too – he was asked to excrete in five minutes and he exceeded the time limit to clean his body by one minute, so he was made to put his excretion over his body. The time limit for urination was a single minute and if they exceeded this then they had to clean it with their tongue. The army made them bathe with a single jug of water, once in fifteen days. Army officers often came drunk and abused the boys sexually.

This continued on and off for eight months. Then the victim was shifted to Rangreth Joint Interrogation Centre for 9 months. No torture was done there. After that, he was shifted to Kot Bhalwal for one month and then to Central Jail Srinagar, where the victim was booked under Public Safety Act [PSA] for 36 months. Later, the sentence was curtailed to 18 months in the High Court, where Advocate Ghulam Qadir Bhat fought this case.

After his release, the case was going on in the court and the victim was appearing in the hearings. After winning the case, the victim resumed his normal life.

The victim, Mushtaq Ahmad Wagay, gave the above statement to the IPTK on.

The victim's statement is clear, and cogent evidence is presented of the torture by the alleged perpetrator. The allegations warrant further investigation. Clearly the alleged perpetrator was responsible for only a part of the torture meted out to the victim and the other persons responsible would need to be identified.

Case No. 18**Victim Details**

Shakeel Ahmad Sofi [Torture]

Age: 40

Occupation: Driver

Son of: Ghulam Hassan Sofi

Resident of: Vehil, Shopian district

Alleged Perpetrators

1. RK Jalla, Superintendent of Police [SP], Special Operations Group [SOG], Jammu and Kashmir Police
2. Mukesh, Deputy Superintendent of Police [DSP], Special Operations Group [SOG], Jammu and Kashmir Police

Case Information

In March 1997, the SOG, Islamabad and Khanabal arrested the victim. He was in Jammu when the SOG Islamabad and Khanabal raided the house he was staying in and they arrested him. They may have had prior information of his being in Jammu. He thinks someone had accompanied them. The commander in charge was SP Jalla; his subordinate, DSP Mukesh, took him to the JIC in Islamabad, where he was tortured. He came to know the identity of Jalla and Mukesh because he was detained in their custody.

He was tortured for the first 15 days. His arms and legs were tied with a rope and he was hanged upside down; his head was dipped in a water tub; he was forced to strip and a roller was rolled over his body. He was detained there for nine months; however, he was tortured for only about fifteen days.

Then, he was shifted to Kathua for six months. He was then moved to Kot Bhalwal Jail, after which he was shifted to the central jail. Finally, his detention under the Public Safety Act was completed and he was released.

The victim, Shakeel Ahmad Sofi, gave the above statement to the IPTK on 9 October 2014.

The victim's statement is clear and cogent evidence is presented of the torture by the alleged perpetrators. The allegations warrant further investigation.

Case No. 19Victim Details

Mohammad Ashraf Bhat [Abduction, Torture]

Age: 45

Occupation: Auto Driver, Militant with Hizbul Mujahideen [1989-1997]

Son of: Sanaullah Dar

Resident of: Kutpora, Waghama, Bijbehara, Islamabad district

Alleged Perpetrators

1. Officer Kalwat, 3 Rashtriya Rifles [RR], Waghama Camp
2. Shafaat, resident of Guree, Islamabad, Government Gunman [Ikhwan]
3. Rafiq, resident of Kanilwan, Bijbehara, Government Gunman [Ikhwan]
4. Gani Gour resident of Beyur, Bijbehara, Government Gunman [Ikhwan]
5. Bashir Ahmad Katoo, resident of Katoo, Bijbehara, Government Gunman [Ikhwan]
6. Dund Resh, Informer to army

Case Information

In 1997, the army and Ikhwan raided the house of Mohammad Ashraf and barged into his house. It was the month of Ramzan. They entered the house in the morning – at the time of Sehar. Dund Resh, resident of Waghama, an army informant and an activist of the National Conference led the raid. He had informed the army about the victim's connection to Hizbul Mujahideen.

The army was 3 Rashtriya Rifles [RR], belonging to the Waghama Camp. Their officer in command was Kalwat. Officer Kalwat had himself raided the house of the victim, along with his personnel and some Ikhwans, identified as Shafaat, Rafiq, Gani Gour, and Bashir Ahmad Katoo. Bashir Katoo was their commander.

When the army and Ikhwan raided the house of the victim, he was on the first floor; Ikhwan brought him into the kitchen and tortured him there. The victim was beaten with sticks by the above-mentioned Ikhwan and electrocuted him with a battery, which was brought along by army officer Kalwat. This went on for 20-30 minutes.

Then the victim was taken to the 3RR camp at Waghama and was tortured there too. He was again electrocuted by officer Kalwat and beaten by the above said Ikhwan. He was made to drink chilly powder water and a roller was rolled over his body. One Sikh army personnel also cut his skin on the left foot. His ears, fingers, and penis were electrocuted and his legs were stretched.

During this period of detention, the Ikhwan visited the

victim's house and picked up his father Sanaullah Dar. They also verbally abused his wife. They brought him to the same camp as the victim's, where he was also tortured and beaten for 3 days. He was then released. When he was brought home, the army planted a bomb in the kitchen and threw gunpowder in the house. The wife of the victim requested Officer Kalwat, who was present there, not to damage their house. The officer didn't agree. The army kept the father of the victim close to the kitchen so as to kill him in the explosion. But a local villager, pulled him and took him far away from the house. The army exploded the bomb and the house was gutted.

After seven days in the camp, the victim was shifted to Khanabal camp. There too he was tortured for one night. After one day in the camp, the victim was taken to the JIC at Khanabal for two months; no torture was done there to the victim. Then he was booked under Public Safety Act [PSA] and shifted to Kathua Jail, Jammu; he was kept there for 18 months. After this, he was shifted to Kot Bhalwal for one month and then shifted to Hari Niwas, Srinagar and kept there for 22 days. Then the victim was shifted to Bijbehara Police Station for one night and then released. A case under FIR no. 17/1997 at Bijbehara Police Station was filed against the victim. Further information on this FIR was sought through RTI dated 15 July 2015. By communication dated 4 July 2015 information was provided that this had been closed as chargesheeted against the victim and the case file had been sent for government sanction [It is unclear why the case against the victim would need to be sent for government sanction].

The victim, Mohammad Ashraf Bhat, gave the above statement to the IPTK on 6 May 2015.

The victim's statement is clear, and cogent evidence is presented of the torture by the alleged perpetrators. The allegations warrant further investigation.

Case No. 20Victim Details

Showket Ahmad Bhat alias Janisar [Abduction, Torture]

Age: 35

Occupation: Private school Teacher [he was affiliated to the Hizbul Mujahideen]

Son of: Ghulam Qadir Bhat

Resident of: Sarnal Payeen, Chiken Mohalla, Islamabad, Islamabad district

Alleged Perpetrators

1. Ramesh Kumar Jalla, SP Operations, Special Operations Group [SOG], Jammu and Kashmir Police
2. Sheikh Tahir alias Tahir Fuf, Government Gunman [Ikhwan]
3. Idrees Baba, Government Gunman [Ikhwan]

4. Sameer Ahmad Bhat alias Babloo Darzi, Government Gunman [Ikhwan]
5. Setha Gujjar, [deceased] Government Gunman [Ikhwan]
6. Abbas Bangali, Government Gunman [Ikhwan]
7. Junaid Dantar, Government Gunman [Ikhwan]
8. Rouf Changa, Government Gunman [Ikhwan]

Case Information

On 15 August 1997, there was a grenade attack on the house of Idrees Baba, a notorious Ikhwan, by some unknown persons. However, the explosion didn't cause any injury to the Ikhwan. Two days later, on August 17, 1997, Ikhwan, along with the Central Reserve Police Force [CRPF] and the army, cordoned the victim's house and asked the witness, the victim's brother, who opened the door, to call him. As soon as the victim came out to the door, the raiding Ikhwan party took him away.

Tahir "Fuf" led the Ikhwan. While leaving the house, he told the family that he would bring back the victim's dead body in half an hour. The other top line commanders of this Ikhwan group were Nana Malpori, resident of Malpora, and Liyaqat, resident of Khanabal.

Other Ikhwan in the raiding party included Sameer Ahmad Bhat alias Babloo Darzi [son of Abdul Majeed Bhat and resident of Dangerpora], Setha Gujjar, resident of General Bus Stand, Islamabad, deceased, Abbas Bangali, resident of Dantar, Khanabal, Junaid Dantar, resident of Dantar, Khanabal, Roup Changa, resident of Cheeni Chowk, Islamabad. The witness was able to identify these Ikhwan because they all belonged to Islamabad and he knew them.

The army and the CRPF had just cordoned the house from outside; they did not enter. The witness was unaware of their camp or battalion.

When Idrees's house was attacked, he named the victim as a perpetrator. Consequently, the Ikhwan came and picked him up. The victim was taken to the Ikhwan headquarter at Shaksaz Mohalla, Kaadipora, Islamabad, where he was tortured. At that time, the victim was just 17 years old.

The next day, on 18 August, the witness and his father, along with Rehman Khar, an acquaintance who was on friendly terms with Idrees, went to Idrees's shop and requested him not to get the victim killed. Idrees responded by slapping the victim's father. The witness then retaliated by slapping Idrees back and told him that if he got the victim killed then he would kill him and his fellow Ikhwan. Idrees then said that he was not going to kill the victim, but only punish him.

A few days later, the victim was shifted to the Joint

Interrogation Centre [JIC] at the SOG camp in Khanabal, where SP Operations Ramesh Kumar Jalla tortured him. The family visited the camp and requested R.K. Jalla to release the victim, who responded that he would release the victim if they could get bail granted for him.

A few days later, the family managed to get bail; they went to the camp to get the victim released. But R.K. Jalla tore the bail order and refused to release the victim. Thereafter, he was kept in custody for 6 months. He was then charged under the Public Safety Act [PSA] and taken to Kathua District Jail. He was kept there for 6 months. After being released, he was taken to Rangreth Camp for 6 more months and finally he was taken to Central Jail Srinagar. He was released after 2 years of imprisonment. He had completed his matriculation inside the JIC, SOG Camp. After his release, he resumed his studies and passed his 12th standard examinations. He then joined the Tehreek-e-Hurriyat and worked there as a library in-charge in their office at KP Road, Islamabad.

In 2004, when Safdar Ali Beigh, a minister of National Conference, was killed, many boys from their neighborhood were picked up; the victim too was taken. He was again booked under PSA and was imprisoned for one and half years at Kot Bhalwal. The victim was probably released in 2005/2006 when the government released many youth who had been booked under the PSA.

In 2006, the victim was appointed as a private teacher in Wanpoh School. After a few days, a grenade exploded at Cheeni Chowk. On the same night, at about 11 pm-12am, Ikhwan and SOG personnel came to the house of Nazir Ahmad [victim's brother] and picked the victim up. They took him to SOG Camp at Khanabal. This time it was Tahir Fuf, R.K. Jalla, and DSP Operations Harmeet Singh. He was released after 8-10 days.

In 2007, three officers of the SOG came to their house at around midnight. It was R.K. Jalla, Farooq and Parvez [the witness knew them]. They asked about the victim. But the victim was then in Jammu, undergoing medical treatment. They told the witness to tell the victim that the court in Islamabad had summoned him. So, the witness called him and made him speak to RK Jalla. The victim informed him that he would return in 4-5 days. They told him that till his return they would take his brother away.

Accordingly, they picked up the witness and took him to the SOG Camp in Khanabal and kept him there for 5-6 days. In the camp, the witness was beaten up and asked to produce his brother, the victim. He was stripped and beaten with sticks. Parvez, one of the officers, kicked him on his chest. Ramesh and Farooq were also present and forced the interviewee to confess that the victim was a militant. They then took him to the office of ASP Javaid Iqbal Matoo and he was made to confess in his presence that the victim

was a militant.

On 5 August 2007, the victim was going towards Leazbal area. At Leazbal, some unknown persons who were in civil clothes, picked him up. They took Showkat in a maroon Sumo [the locals of Leazbal told the witness about this half an hour after his dead body was found at Barakpora]. Two farmers who were working in a nearby field that time said that they saw a boy brought there by the police in uniform and then shot dead.

The victim's brother, Nisar Ahmed Bhat, gave the above statement to the IPTK on 23 April 2015.

The victim's statement is clear, and cogent evidence is presented of the torture by the alleged perpetrators. Idrees Baba does not appear to have a role in the physical torture of the victim except that he appears to be a part of the conspiracy – and indeed the reason – that led to the torture of the victim. The allegations warrant further investigation, particularly with regard to the killing of the victim as there is no evidence on the identity of the accused responsible for the killing of the victim.

Case No. 21

Victim Details

Mohammad Amin Zargar [Torture]
Age: 39
Occupation: Tailor
Son of: Late Ghulam Mohammad Zargar
Resident of: Feroze Shah Mohalla, Bijbehara, Islamabad District

Alleged Perpetrators

1. Major George of SICOP⁸ Camp, Islamabad
2. Rathore, Deputy Superintendent of Police [DSP], Operations, Special Operations Group [SOG], Jammu and Kashmir Police

Case Information

Mohammad Amin had crossed the Line of Control in 1992 for arms training and returned in 1995 and got actively involved with Al-Jehad for about 3 years. He was arrested in 1998 by personnel from the SICOP army camp. Mohammad Amin was picked up near Baba Naseem-ud-din Gazi's Shrine at Feroz Shah Mohalla by army personnel from the camps at SICOP and Dak Bungalow Bijbehara, headed by Major George.

At SICOP Camp, he was tortured severely for 10-12 days. His lips were burnt using cigarette butts, and

even his eyebrows were burnt. After a period of twelve days he was shifted to Joint Interrogation Centre [JIC] Khanabal. At JIC he was detained for a few days. After serving detention at JIC, Major George of SICOP camp, who had gone for leave returned to the camp and called Amin again to his camp, for about one hour. Major George scorched his chest. His private parts were electrocuted and burning coal was put over his body. When he was tortured severely at SICOP, his family approached Deputy Commissioner Anantnag who got Amin back to JIC for ten days. When he was detained at JIC Khanabal for the first time he had been tortured by DSP Rathore who was then the head at JIC. He had kept Amin naked in the month of Ramzan. Most of the torture inflicted on him was perpetrated by Major George of SICOP camp. Amin bore torture marks till his death.

After JIC, he was booked for some false charges and was sent to Hira Nagar Jail in Jammu. He was finally released from Bijbehara police station.

Major George also tortured many other locals of Bijbehara during their detention. Major George made a lot of money by arresting innocent locals and then demanding money for their release. Major George was transferred from the area four months after Amin's arrest. Amin was married in 2004 and lived comfortably until he developed certain disorders due to the severe torture inflicted on him. He developed lung cancer in 2013 and breathed his last on 9 May 2014.

The brother of the victim, Mohammad Ismail Zargar, gave the above statement to the IPTK on 9 January 2015.

The witness statement is clear, and cogent evidence is presented of the torture by the alleged perpetrators. The allegations warrant further investigation.

Case No. 22

Victim Details

Salman Yousuf [Abduction, Torture]
Age: 47
Occupation: Human rights activist
Son of: Abdul Rashid Sofi
Resident of: Brar, Bandipora

Alleged Perpetrators

1. Manohar Singh, Superintendent of Police [SP], Special Operations Group [SOG], Jammu and Kashmir Police
2. JP Singh, Special Operations Group [SOG], Jammu and Kashmir Police

3. Devinder Singh, Special Operations Group [SOG], Jammu and Kashmir Police
4. Rani, Police officer, Special Operations Group [SOG], Jammu and Kashmir Police
5. Abdul Rashid Khan, alias Rashid Billa, Station House Officer [SHO], Jammu and Kashmir Police

Case Information:

Salman Yousuf, a resident of district Bandipora had to migrate from his original residence to evade state forces harassment. Salman, a Jamaat-e-Islami activist joined the group in 1987 when he was pursuing his higher secondary education. Later, Jamaat entrusted Salman with the job of data collection on human rights violations. He worked with the Institute of Kashmir Studies [IKS] a wing of Jamaat-e-Islami. He also lectured public gatherings about the importance of Kashmir resistance movement. His political activities invited state agencies attentions towards him.

He had been chased many times by the State forces but he managed to evade arrest.

On 1 May 1998, at around 11 pm, he was sleeping in his room in his rented house at Soura, Srinagar. His family was watching a movie on the television. At the same time, Central Reserve Police Force [CRPF] personnel along with Special Operations Group [SOG] personnel cordoned the whole locality at Soura and locked all the doors of the houses at Malik Sahab Mohalla, Soura i.e. around 100 houses were locked. SOG was headed by SP Manohar Singh, and others present were JP Singh and Devinder Singh. They barged into the house. SHO Soura Rashid Billa was along with these SOG personnel. He punched Salman Yousuf on his chest. They had received information about him from some source of Bandipora. After entering the house, SP Manohar Singh asked him "Are you Salman Yousuf, a human rights activist?" Salman Yousuf said he was and that he worked with IKS. Salman Yousuf knew the names of these officers because he read it from their uniforms. They accused him of hiding militants in house and they asked for the militants names. Salman Yousuf replied them that he was only a human rights activist and had nothing to do with militancy. In this conversation Manohar Singh accused him of being an ISI agent and not an IKS member or human rights activist. He told them the Ghulam Mohammad Bhat, Chairman of IKS was a well known political leader of Jammu and Kashmir. Salman told them to confirm with him that he is working with his organization which is purely political, academic and for research purpose. He told them that IKS is a school of humanity and had nothing to do with any militant activity. Meanwhile Manohar Singh ordered his men to shoot him as they shoot S. Hameed [Chairman of Jammu and Kashmir Peoples league]. They dragged him and his brother-in-law namely Manzoor Khan out of the house barefooted and took

them downstairs and put them in their vehicle. Before this in the room they thrashed his four month old baby namely Farzan onto the ground due which his arm got fractured.

They were taken to Cargo interrogation centre, Srinagar near Shergarhi Police Station. There they threw Salman Yousuf in 3 by 4 dark cell. His brother-in-law was kept in a separate cell and then Humhama SOG camp.

At the interrogation centre, Salman Yousuf was taken to the torture cell and there he was hanged. His hands were twisted backside and he was hanged by his hands from the backside. He was hung for around 45minutes. He was requesting them to put him down. He was pleading that he had nothing to do with militancy. Then he was made to sleep on a death bench and they tied a cloth on his mouth and put chili powder water over his face. After that around 18 SOG personnel trampled him under their feet and applied a wooden log on his legs. This torture was happening under the supervision of SP Manohar Singh and Devinder Singh. They also connected wires to the toes and shoulders and he was given electric currents. This torture was done to him for 16 hours. He was kept naked for 7 days in a torture cell and was constantly tortured by SOG. This torture was done to him every day for 10 days. An iron rod was penetrated on both his thighs. A small needle like iron rod was also penetrated into his private parts. His body was also burnt by the stove. Once during these days of detention Salman Yousuf was kept in tub of water, his legs were stretched 180 degrees and he was electrocuted as well. Devinder Singh and Rani were there in the cell. Devinder Singh was telling Rani, a police officer, how he had kept and tortured Salman Yousuf.

During those days, human rights defenders of India like Rajender Sachar, Balraj Puri, and Justice Tarkunde read the news about Salman Yousuf's arrest and visited Cargo torture centre to see Salman Yousuf according to news reports Manohar Singh, SP Cargo SOG told them that Salman is on raid with SOG and is not there. But Salman was inside the Cargo torture cell. Then they left from Cargo. Later on he came to know this from the Chairman of IKS.

The Chaiman of IKS approached the National Human Rights Commission of India to release Salman Yousuf. As a result, SP Manohar Singh told him that he will free him on the condition that he would take his case at NHRC back. So they took his sign on a blank paper and released him after around 28 days. He was unable to walk.

The victim, Salman Yousuf, gave the above statement to IPTK.

The victim's statement is clear, and cogent evidence is presented of the abduction and torture by the alleged perpetrators. The allegations warrant further

investigation.

Case No. 23

Victim Details

Mushtaq Ahmad Mir [Torture]

Age: 40

Occupation: Government Service [working in Jammu and Kashmir Police]

Son of: Mohammad Majnoo Mir

Resident of: Sheikh Pora, Rafiabad, Baramulla district

Alleged Perpetrators

1. Major Bhaderwah, Army, Chanam Camp
2. Khurshid Khan, resident of Baramulla, Government Gunman [Ikhwan]
3. Commanding Officer, Watergam Camp [as of May 1998]

Case Information

In May 1998, Mushtaq was called to the Chanam Camp by the army. He was called at about 7 am, through Numberdar Abdul Khaliq. In the camp, the victim was told by an officer known as Major Bhaderwah that he used to provide shelter and food to the militants and was asked to share the information of hideouts of the militants. The victim answered that he had seen the militants passing through their village but had never been with them and had not provided food or shelter to them.

The Major told the victim to help him catch militants but the victim refused, and after that, he was beaten ruthlessly by a few army personnel by sticks. An Ikhwan named Khurshid Khan of Kingroosa, Baramulla, who was in the camp, also beat the victim. He too asked the victim about the militants. The family of the victim approached the camp to ask for his release but they were not allowed to enter the camp. The victim was beaten on and off throughout the day. At around 7 pm, two other boys Mohammad Rustam Mir [son of Razaq Mir] and Bashir Ahmad Mir [son of Aziz Mir], both residents of Sheikhpora, were brought to the camp. They too were asked about the militants and were beaten.

In the night at about 2 am, the victim was referred to Watergam camp. In the morning, at around 5 am, he was taken to the room of the Commanding Officer. The Commanding Officer [not identified] alleged that the victim used to be with a militant Mubarak Shah and that he was close to him. Mubarak was a militant from the same village. The victim denied this. After that he was tortured –he was made to overdrink water and his head was put under a tub of water for almost 10-15 minutes. A roller was rolled over his thighs for around 20 minutes. The victim was stripped and wires were connected to his toes, private parts and chest to give him electric shocks. This was done to him for 10-15 minutes. The victim was tortured for the first day in the

camp. He was released after seven days but was ordered to appear in the camp every day. On the seventh day, Numberdar Abdul Khaliq was called to the camp and the victim was handed over to him.

The victim obeyed the order and appeared in the camp daily in the morning. But the victim was detained there till evening. This continued for one month. After that, the victim was called to the camp only when any militant action took place. Then the victim joined the Jammu and Kashmir police to get rid of this harassment. After that, the army never harassed him.

The victim, Mushtaq Ahmad Mir, gave the above statement to the IPTK on 29 June 2015.

The victim's statement is clear, and cogent evidence is presented of the torture by the alleged perpetrators. The allegations warrant further investigation.

Case No. 24

Victim Details

Irshad Ahmad Sheikh [Torture]

Age: 45

Occupation: Teacher

Son of: Ghulam Hassan Sheikh

Resident of: Hergam, Shopian district

Alleged Perpetrators

1. Major Inderjeet Singh, Chowgam army camp

Case Information

On Friday, 5 June 1998, the victim was arrested. The victim remembers the date because it was a prominent day for prayers and he prays regularly. It was evening and the army was searching for him. He was called out of the house and taken on foot till the Chowgam camp. Inderjeet Singh was not with them. The victim came to know of him in the Camp when his subordinates referred to him as Major Inderjeet inside the camp. He doesn't know the army unit or rank.

In the camp, he was brutally tortured with a wooden roller that was rolled over his body; his hands and legs were tied with a rope and he was hanged upside down; his body parts were burnt with cigarette butts. He was tortured the entire night, after which he was not able to walk, sit, or run.

Next morning, he was released but in a half dead condition. Major Inderjeet did not torture him in person but when he said that he wanted to meet him, he was not allowed to do so.

He was left because he was found to be "innocent". They arrested him, as they thought he had weapons and other items.

The brother of the victim, Irshad Hussain Sheikh, gave

the above statement to the IPTK on 11 November 2014.

The witness statement is clear and cogent evidence is presented of the torture by the alleged perpetrators, even though this is not the most direct evidence as that would have to come from the victim himself. The allegations warrant further investigation.

Case No. 25

Victim Details

Shameema Bhat [Torture]

Age: 40

Occupation: Housewife

Daughter of: Sanaullah Rather

Resident of: Wara-Sangam, Budgam district

Alleged Perpetrators

1. Rani Khalida, Special Operations Group [SOG], Humhama Camp, Jammu and Kashmir Police
2. Gupta, Special Operations Group [SOG], Humhama Camp, Jammu and Kashmir Police
3. Mushtaq Pal, Government Gunman

Case Information

According to the victim's family, it all started in November 1998, when Mushtaq Pal [militant turned government gunman] informed the police that Ashraf Bhat's family was not only providing shelter to the militants but also hiding arms and ammunition [Mushtaq Pal is famous for using his connections with the police and the army for extortion].

The SOG of the Jammu and Kashmir Police and personnel of the Border Security Force, accompanied by four uniformed women police personnel, with the help of local boy [who was told to locate Ashraf Bhat's house], started marching towards Ashraf Bhat's house. The entire family, which consisted of Shameema [wife], Ashraf Bhat [Husband], two children named Irshad Ahmad Bhat and Rehana Ahmad Bhat, along with two brothers-in-law, were present in the house. As soon as they saw that the SOG and Border Security Force personnel approaching their house, they ran and took shelter in the neighboring house.

They took Shameema's brothers-in-law [who were hiding behind the house] under custody. They were taken to the SOG Camp in Humhama. The next day, a relative named Abdul Aziz of Gotpora, also a police inspector, went to the SOG Camp, and he was told that only if Ashraf Bhat and Shameema show up at the camp would the others be released.

The next day Ashraf Bhat and Shameema Bhat went to the Humhama Camp, accompanied by Abdul Aziz. The Camp was under the control of Gupta of the SOG, and he told the personnel to take the couple inside to torture them. As per the orders, both Ashraf Bhat and Shameema Bhat were taken to a small tin shed. Ashraf Bhat was hanged upside down and was tortured. The SOG personnel asked Shameema to tell her husband to reveal the place where they had hidden arms and ammunition for the militants. Although Ashraf Bhat and Shameema repeatedly said that they were not aware of any such thing, they were still tortured. Finally, Ashraf Bhat and Shameema Bhat mockingly suggested the SOG to provide arms and ammunition, which they could themselves recover later.

Three women personnel, one of them named Rani Khalida, gave continuous electric shocks after every four or five hours. Even though Shameema told the women personnel that she was seven months pregnant, she was still beaten up with a stick especially on her stomach, arms and legs.

In the evening, Ashraf Bhat was taken to jail and Shameema was left under the custody of women personnel. The condition of Shameema worsened as her vagina started bleeding. The women personnel communicated this to Gupta and Ashiq Bukhari, who was also there. They now turned things around and asked why both husband and wife had been detained there. Ashraf Bhat was brought back and both of them were ordered to be released, as there were no allegations against them. In addition, Gupta offered Rs. 100 to the victim for her treatment.

The police personnel took them out towards the roadside but no one was ready to offer them a ride till home due to their condition. Finally, the couple, with the help of two Kashmiri women police personnel from Ompura [not involved in torturing the couple], reached their house by a local truck late at night.

The next day, Shameema visited the nearest local hospital where she was suggested to visit Lal Ded hospital, Srinagar. The doctors did not provide any kind of treatment for the next three days. On the fourth day, police from the locality visited the hospital and told the doctors to provide her with the necessary treatment. Shameema was then operated on and the doctors had to abort the child with the help of dilatation and curettage procedure. After being hospitalized for thirteen days, Shameema was told to take bedrest for one month.

The neighbors and the relatives of the victim family started taking to the streets, demanding justice outside the office of Deputy Commissioner of Budgam.

After the incident the couple was unable to do any kind of work due to which the couple's elder son was left with no other option but to quit his studies in order to help his family's survival and fund his sister's education.

The victim, Shameena Bhat, gave the above statement to the IPTK on 25 March 2015.

The above statement directly indicts Rani Khalida and officer Gupta, despite his seeming turnaround subsequently. The role of Ashiq Bukhari is less certain and has not been adequately fleshed out in the testimony. It is not known in what capacity he was present there and what position he held at the time and whether he had any effective control over the personnel administering the torture to the victim and husband. In these circumstances, he cannot presently be considered an accused in this case and further investigations would be required.

Case No. 26

Victim Details

Khaleel Ahmad Choudhary [Wrongful Restraint and Attempt to Murder]
Occupation: Munsif / Judicial Magistrate 1st Class, Tangmarg, Baramulla District

Alleged Perpetrators

1. Ram "Bloose" Paswan, Sepoy, 159th Field Regiment

Case Information

On 30 January 2001, Khaleel Ahmad Choudhary was driving in his vehicle when he was stopped near the Kunzer market by an army patrol.

His vehicle was searched. Khaleel Ahmad Choudhary showed his High Court of Jammu and Kashmir issued identity card to the army patrol.

The army personnel threw his identity card and said that they had seen enough of the courts. They said that the courts were nothing before the army. Khaleel Ahmad Choudhary protested on the behavior of the army personnel and told them that they could only limit themselves to a search and that their behavior was contemptuous to the judiciary. On this, an army personnel cocked his gun with the intention to fire at Khaleel Ahmad Choudhary.

First Information Report [FIR] no.13/2001 was filed

at the Kunzer Police Station u/s 307 [Attempt to murder], 341 [Wrongfully restraining person] Ranbir Penal Code, 1989 [RPC] on 30 January 2001⁹. The 22 May 2012 communication from the Jammu and Kashmir Police states that the case was under investigation. The name of the alleged perpetrator is mentioned on the FIR.

Separately, a RTI was filed regarding all FIR's filed in Jammu and Kashmir against the State forces. By communication dated 25 December 2013 from the Jammu and Kashmir Police, a copy of the FIR was provided. The communication states that sanction for prosecution has been sought in this case.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was not received.

Case No. 27

Victim Details

Ghulam Hassan Kumar [Abduction and Torture]
Occupation: Guard
Son of: Abdul Habib Kumar
Resident of: Jodi Nambal, Rahama, Baramulla District

Alleged Perpetrators

1. Major Yadav Singh alias Aman, 28 Rashtriya Rifles [RR], Army, Camp Salkote
2. Akbar Khan, Government Gunman [Ikhwan]
3. Chidiya, Government Gunman [Ikhwan]

Case Information

First Information Report no.12/2001 u/s 307 [Attempt to murder], 343 [Wrongful confinement for three or more days], 326 [Grievous hurt by dangerous weapons/means] Ranbir Penal Code, 1989 [RPC] was filed at the Panzalla Police Station¹⁰. The 22 May 2012 communication of the Jammu and Kashmir Police states that the case was under investigation. The FIR states that Ghulam Hassan Kumar was tortured by Major Yadav Singh and other army personnel. On 8 February 2001, Ghulam Hassan Kumar, working as a guard at a Sikh family's house, was taken by the personnel of the 28 RR and then tortured. Kerosene was sprinkled on his body and his neck was tied. He was released on 12 February 2001. On 20 February 2001 his condition deteriorated.

The family of the victim gave a statement to the IPTK on 1 July 2015. They state that there was enmity

⁹ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 22 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

¹⁰ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 22 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

between the families of Abdul Habib Kumar and Abdul Salaam Kumar. This enmity was for the land which was of Abdul Habib Kumar and his neighbor Abdul Salaam wants to take over it without paying its price to the owner. The sons of Abdul Salaam Kumar namely Khursheed Kumar and Abdul Hameed who were the informers of army gave the wrong information to the army that Abdul Habib's use to provide food and shelter to militants. On 8 February 2001, at around 07:00 pm, Ghulam Hassan Kumar was picked by army 28 RR headed by Major Yadav who was called as Amaan in the area and Ikhwan identified as Akbar Khan of Kaambar Rafiabab and one more known as Chidya. He was taken from the house of Kar Singh son of Diraj Singh resident of the same village, where he was working as watch man. Ghulam Hassan was first beaten on the spot where he was picked and then was taken to the camp of 28 RR camped at Tapiana Saab, Salkote, Rafiabab. In the camp army threw kerosene over the body of the victim and was burnt then. A neighbor namely Farooq Ahmad Khan who had seen taking the victim to the camp told the family about the incident on the next day morning. Family approached a person namely Duminder Singh resident of Salkote who had good relationship with the major. They plead to him for the release of the victim. Duminder Singh spoke to the Major for the release of the victim. After four days the Major released the victim. He was in the critical condition as the body was burnt. Family tried to take him to the hospital but the army did not allow them to do so. They forced the family to take the victim home. After three days family took the victim in the night and managed to take him Baramulla Hospital.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was not received.

It needs to be ascertained whether the Jammu and Kashmir Government completed investigations and has at all sent the case for sanction for prosecution to the Ministry of Defence and whether the Ministry of Defence has misplaced the case file.

At least after the 2009 affidavit by the Ministry of Defence, the Jammu and Kashmir Government should have considered even re-sending the case or clarifying when and how the case was sent.

In any case, after providing this information before the High Court of Jammu and Kashmir in 2009 and also in 2001 after the case was filed against the personnel of the army the Ministry of Defence seems to have cared very little about the Jammu and Kashmir Police investigations or in instituting a process for delivering

justice.

The available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 28

Victim Details

Mehraj-ud- Din Dar [Assault]
Resident of: Rawalpora, Srinagar

Alleged Perpetrators

1. Deputy Inspector General [DIG] A.K. Malik, 194th Battalion Border Security Force [BSF]
2. Ghulam Mohammad Mir alias Muma Kanna, Government Gunman [Ikhwan]

Case Information

First Information Report [FIR] no.42/2001 u/s 307 [Attempt to murder], 109 [Abetment] Ranbir Penal Code, 1989 [RPC] was filed at the Magam Police Station¹¹. The communication of 21 December 2011 stated that on 10 May 2001 Mehraj-ud- Din Dar and other journalists reported to the Magam Police Station that on that day they went to the Magam Chowk to cover the firing incident which took place there on 9 May 2001. In the meanwhile, DIG A.K.Malik and his personnel snatched their cameras and beat them ruthlessly. They fled from there. By communication dated 9 July 2012 from the Jammu and Kashmir Police a copy of the chargesheet filed on 3 June 2004 against Ghulam Mohammad Mir was provided.

The chargesheet states that on 9 May 2001 Mehraj-ud- Din Dar and others had gone to do reportage. DIG A.K.Malik instructed his personnel to beat Mehraj-ud- Din Dar and the others and open fire on them, but no one was injured.

While Ghulam Mohammad Mir is mentioned as an accused in the chargesheet, no details are provided on his role.

Sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] was sought for DIG A.K.Malik.

No information exists on the presence status of prosecution against Ghulam Mohammad Mir.

Further, the IPTK sought information on 10 January 2012 on all inquiries and Court-Martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir. No information was provided.

¹¹ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 21 December 2011 from the Jammu and Kashmir Police a copy of the FIR was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

The IPTK also sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

Case No. 29

Victim Details

1. Constable Mohammad Yousaf, No.1845/A, Jammu and Kashmir Police [Assault and Wrongful Confinement]
2. Constable Ghulam Ahmed, No.1519/A, Jammu and Kashmir Police [Assault and Wrongful Confinement]

Alleged Perpetrators

1. Assistant Commandant [Deputy Superintendent of Police], Surinder Singh, 104th Battalion Border Security Force [BSF], Camp Iqbalabad

Case Information

First Information Report [FIR] no.421/2002 u/s 392 [Robbery], 332 [Causing hurt to deter public servant from duty], 341 [Wrongfully restraining person] and 342 [Wrongfully confining person] Ranbir Penal Code, 1989 [RPC] was filed at the Anantnag Police Station¹².

The 9 July 2012 communication from the Jammu and Kashmir Police states this case had been closed as chargesheeted. By communication dated 16 May 2014 from the Jammu and Kashmir Police it was stated that sanction related documents would not be provided as "status of sanction is obviously not relevant question at this stage". By communication dated 18 December 2004, from the Jammu and Kashmir Police, a copy of letter dated 15 January 2005 from Deputy Superintendent of Police [DSP], Anantnag, to Station House Officer [SHO], Police Station Mattan, Anantnag, was provided. This communication refers to attached CD file and a letter from the Police Headquarters dated 23 December 2004. In view of these documents, the SHO is directed to process the file again for obtaining sanction.

The victims were on duty at Payabuk on 27 August 2002. DSP Surinder Singh came there along with other personnel of the 104th Battalion BSF. The victims were beaten, and obstructed from doing their official duty. Constable Ghulam Ahmed's uniform was torn and both of their weapons were taken away. They were taken in a BSF vehicle to the Iqbalabad Camp and detained.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 in relation to this case that sanction was sought from the Ministry of Home Affairs on 29 August 2008 and was awaited.

It is noteworthy that it took the Jammu and Kashmir Police and Government of Jammu and Kashmir took six years to investigate and process the case for acquiring sanction for prosecution under AFSPA which apparently helped the perpetrators in evading justice. Further, the Jammu and Kashmir Police response to RTI is also telling as they suggest that a question of sanction is not "relevant".

Further, the available documents do not suggest that even a court-martial was conducted in this case by the BSF.

Case No. 30

Victim Details

Mohammad Hanief Bhat [also known as Bisati] [Abduction, Wrongful Confinement and Torture]
Age: 47
Occupation: Owner of a phone booth
Son of: G.R. Bhat [deceased]
Resident of: 47, Sumkach Bal, Rainawari, Khanyar, Srinagar

Alleged Perpetrators

1. Major Vikram, 2 Rashtriya Rifles [RR], Army, Camp Zainakote

Case Information

On 29 August 2002, Mohammad Hanief Bhat was picked up by the personnel of the 2 RR, Army, to show them the Zoonimar route.

He was first taken to Sharifabad Camp, Srinagar, for a month, and then to Kuligam Camp, Kupwara in the custody of 18 RR, Army. At that point the victim was in the custody of personnel of the 18 RR. The victim was detained in Kupwara for 2-3 days. He was once again shifted to Sharifabad and then taken to Cargo Interrogation Centre, Shergari, Srinagar where he was tortured brutally.

Mohammad Hanief Bhat believes the reason for his detention to be a trip he made to Pakistan in 2000.

¹² Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 9 July 2012 from the Jammu and Kashmir Police a copy of the FIR was provided. An incomplete copy of the chargesheet was provided. Further information sought through RTI on 15 October 2013. By communication dated 16 November 2013 from the Jammu and Kashmir Police a copy of the chargesheet was provided. Further information sought through RTI dated 14 November 2014.

Mohammad Hanief Bhat was booked under Prevention of Terrorism Act, 2002 [POTA] for six months. After being bailed out he was booked under the Public Safety Act, 1978 [PSA]. The chargesheet in the POTA case is yet to be produced in the court. Recently, the victim was called back by personnel at Cargo Interrogation Centre but in consideration of his age and condition he was not detained.

Mohammad Hanief Bhat states that following the first PSA order, it was evident that a second PSA order would be placed upon him but the High Court quashed it.

Mohammad Hanief Bhat gave a statement to the IPTK on 27 February 2012.

First Information Report [FIR] no.90/2002 u/s 342 [Wrongfully confining person] Ranbir Penal Code, 1989 [RPC] was filed at the Khanyar Police Station¹³. The 21 December 2011 communication of the Jammu and Kashmir Police stated that the case was closed as not admitted on 19 May 2010. By further communication dated 9 July 2012 from the Jammu and Kashmir Police, a copy of the case diary was provided which states that a case was made out under sections 342 [Wrongfully confining person] and 364 [Kidnapping/Abducting to murder] Ranbir Penal Code, 1989 [RPC]. But, subsequently sanction for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA] was declined. By communication dated 30 November 2013 from the Jammu and Kashmir Police a copy of the closure report was provided. By communication dated 22 April 2014 the denial of sanction document was provided. Decline of sanction, dated 1 June 2009 was sent from the Ministry of Defence to the Home Department, Government of Jammu and Kashmir. The letter states that on 5 September 2002, Khanyar Police Station received a written complaint from Ghulam Mustafa Bhat, son of Ghulam Rasool, resident of Khanyar, that on 29 August 2002 some unknown persons in uniform lifted his brother, Mohammad Hanief Bhat, from the STD shop near Dastageer Sahib Shrine. The complaint stated that Major Vikram of 2 Rashtriya Rifles was responsible for the abduction. The Ministry of Defence states in this letter that at the time of the incident there was no officer by the name of Major Vikram posted in the unit. Further, Sub-divisional Police Officer, Khanyar endorsed on the file that Mohammad Hanief Bhat was previously an active militant of Hizbul Mujahideen and was acting as their financial conduit. He was actively involved in money laundering and FIR no. 105/2002 under Section 3 Prevention of Terrorism Act [POTA] was registered against him. The Ministry of Defence states that the

allegation of illegal detention was baseless and “no records supporting the alleged apprehension of the individual by 2 Rashtriya Rifles exist in the unit”. Statements given by his family members were aimed at maligning the image of the security forces and claiming compensation from the State. Therefore, sanction was declined.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under AFSPA, stated in relation to this case that sanction was declined for Major Vikram on 1 June 2009.

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution, stated on 6 September 2011 in relation to this case that sanction for Major Vikram was declined on 1 June 2009.

The intolerance of the Jammu and Kashmir State towards bail orders by subsequent detentions under PSA is evidenced in this case.

Even after the quashing of the PSA detention of Mohammad Hanief Bhat which confirmed the illegality and harassment of the victim, the Jammu and Kashmir Police did not agitate the decline of sanction but chose to mechanically close the case.

Most importantly, this case serves as another illustration of the manner in which the Ministry of Defence appraises requests for sanction for prosecution under AFSPA. The first reason provided is legally tenable i.e. that the accused does not exist. The second and third reasons are completely without merit. The past activities of the victim [alleged to have been an active militant in the past] would have no bearing on the accusation – a crime of abduction and illegal detention. Further, once again in light of an allegation of a crime having taken place, it is quite absurd that the Ministry of Defence negates the apprehension of the victim by suggesting that no records exist with the accused agency.

Case No. 31

Victim Details

Fayaz Ahmad Tantray [Abduction, Torture]

Age: 37

Occupation: Government Service [Works in Dept. of Irrigation and Flood Control]

Son of: Abdul Hameed Tantray

Resident of: Tantraypora, Palhallan, Pattan, Baramulla District

¹³ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 21 December 2011 a copy of the FIR was provided. Further information sought through RTI on 15 October 2013.

Alleged Perpetrators

1. Mushtaq Sadiq, Superintendent of Police [SP] Operations, Special Operations Group [SOG]
2. Rakesh, Major, Army, Wattergam Camp

Case Information

In 1990, the brother of the victim Rafiq Ahmad Tantray went across the line to join the militancy movement. Since then, the army had been harassing the family and the victim.

The army of the Hamray camp raided their house many times and enquired about the brother. Since 1995, the victim was forced to appear in the army camps at Palhallan, Wusan and SOG Camp Baba Taing every Sunday. Intelligence Bureau officers Bishnu Pandey and Verghese also called the victim to Hyderbaig camp. At the camp, the victim came to know about the name of these officers.

Since 1998, the victim and other persons of the village [anyone whose family members were militants] were forcibly kept in the camp for a night and made to sleep there. Then in the morning, the victim and others were made to sweep the camp and only then were they allowed to leave. This continued till 2001.

In 2002, at about 9:30 am, the victim was at the shop of his maternal uncle Ghulam Mohammad Bhat. Meanwhile, two government gunmen Mohammad Abdullah Yatoo and Reyaz Sadda passed through the same road where the shop was situated. There was also an army camp in the Pandit houses then. One of them, Mohammad Abdullah Yatoo, was shot on his head. Nobody could find out where from the bullet was fired. Then the army also fired in the air. The victim and the uncle ran away from the spot and hid themselves at Kumar Mohalla. The army raided the same place where the victim and the uncle were hiding. They were arrested and brought to the spot of incident again. There the Deputy Superintendent of Police [DSP] Operations Rashid Billa grabbed the ear of the victim and asked him about the killing. Then both the victim and uncle were taken to Palhallan Camp and were kept there for 5-6 days before being released.

On the night they were released, at about 11:30 pm, the SOG of Baramulla raided the house of the victim. The victim was taken to G-Branch, Matches Factory, Baramulla. For first 1-2 days, no torture was done. After 2 days, the victim was tied to a chair and was beaten by sticks. SP Operations Mushtaq Sadiq would beat the victim himself. After beating him, the victim was electrocuted. When the victim was going out to the bathroom, SOG personnel beat him till he reached the bathroom. The victim was released after 16 days and torture was done to the victim on and off during these days. Then the victim was brought to police station Pattan for 5-6 days and was released then.

On the same day when the victim was released, SP Mushtaq Sadiq was going on a raid to Shalpora, Palhallan. When he reached Palhallan, he sent the watchman of the area to call the victim. The SP took the victim along for the raid. On returning from there, the SP handed over the victim to Police Station Pattan and the victim was kept there for 2 days.

On 15 August 2002, the victim and other inhabitants of Palhallan were forced to hoist Indian Flags on their shops and houses by the army of Wattergam. Major Rakesh was along with the army. The Major noticed that the flag hoisted on the shop of victim's maternal uncle was not correct. He asked the victim who had hoisted the flag and told him to bring the flag down. The victim tried to bring the flag down but he couldn't reach the height of the flag. The Major abused the victim verbally and scolded him to bring it down. The victim jumped and brought the flag down, but the flag fell down on the road. So the army beat the victim with sticks, and Major Rakesh slapped the victim 10-15 times. He was trampled by the army and dragged on the road.

In 2003, the victim was going to his office to Sopore in a bus, but he noticed that he was being followed by a sumo [the sumo was stopping where the bus stopped and was trailing the bus till Sopore]. At Sopore, when the victim alighted from the bus, four boys came out of the sumo and asked the victim about Huda College; the victim replied that it was in Pattan. All the four boys were non-Kashmiris; the victim identified this by their language and look. The boys took out a pistol and forced the victim to get into the sumo. They covered the eyes of the victim and after driving around for 2-3 hours, kept the victim in a water tank, which was in an army camp. The victim feels that he was kept in Choor Camp, as there was a water tank in Choor Camp. The tank was almost 50 meters deep. The victim was brought down using a ladder. On the first day in the tank, the victim was made to drink chili powder water and was not allowed to sleep, as a bright lamp was kept on in the tank, which was pointed towards his face. The victim was kept there for seven days and for this period the victim was not allowed to sleep.

After this, the victim was referred to Sharifabad camp for seven days. At both the places, the victim was asked about his brother's whereabouts. On the seventh day at Sharifabad camp, an army officer told him that he would be killed the next day. He was told that his parents would receive a message tomorrow that their son had been killed while crossing the border. The victim doesn't know the name of the army person who said this to victim. On the same night, the victim was brought to Narbal with his eyes covered at about 12:30 am and was tied there with a tree. Some army person told the victim that he was going to shoot him and he asked the victim where he would like to be shot. The victim replied on the heart. The army left the victim there, but the victim wasn't aware about it as his eyes were covered. He was under the threat that he would

be shot. After an hour, the then SHO Pattan Muneer was passing through the same road along with his personnel where the victim was tied. He found the victim tied to a tree. He took the victim to police post Mirgund. From there he took the victim to police station Pattan. He gave food to the victim. He also called the family of the victim and told them that he had found Fayaz. The family wasn't aware where the victim was kept. The victim was then released the next day.

After a few days, Major AK Sharma of Wusan Camp, along with his personnel, visited the house of the victim. He told him that the Research and Analysis Wing [RAW] from Delhi had picked him up. The Major also asked the victim if any of his belongings remained with the RAW personnel; the victim replied his watch, mobile and Rs. 1300 with the wallet. The major told the victim that he would receive each thing back. After 10-15 days, the victim received his things back from Wusan Camp.

After 2003, the victim wasn't harassed anymore.

The victim, Fayaz Ahmad Tantray, gave the above statement to the IPTK on 31 May 2015.

Strong and credible evidence is given of numerous instances of torture. These allegations would need to be further investigated. The only named alleged perpetrators is therefore SP Operations Mushtaq Sadiq against whom the evidence is credible right at the site of torture and includes him administering the torture.

Case No. 32

Victim Details

Baldev Singh and his family [Assault, Abduction and Wrongful Confinement]
Resident of: Singhabagh, Baramulla District

Alleged Perpetrators

1. Major Rakesh, 46 Rashtriya Rifles [RR], Army, Posted at M.E.S. Inspection Bungalow

Case Information

Baldev Singh was wrongfully confined and beaten up in his own house, as were his wife and son, by Major Rakesh on 18 August 2003 due to a dispute on the parking of vehicles in an area.

Baldev Singh and his family were then dragged to the army camp where they were illegally confined. With the intervention of other locals they were set free.

First Information Report [FIR] no.179/2003 was filed at the Baramulla Police Station u/s 452 [House trespass after preparation for hurt/assault/wrongful restraint], 354 [Assault/Criminal force to a woman with intent to outrage modesty], 342 [Wrongfully confining person] Ranbir Penal Code, 1989 [RPC] on 18 August 2003¹⁴. The 22 May 2012 communication from the Jammu and Kashmir Police states that the case was under investigation.

The Ministry of Defence, in its affidavit before the High Court of Jammu and Kashmir in 2009 on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated in relation to this case that it was under consideration. The victim of the incident is referred to as Amar Deep Singh.

The Ministry of Defence, despite the passage of six years since the commission of the crime, is further delaying the processes of justice by not taking a decision on the issue of sanction for prosecution under AFSPA.

Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

Case No. 33

Ghulam Rasool Najar [Torture]

Age: 35

Occupation: Militant with Muslim Janbaz Force [alias Rasool Afgani]

Son of: Abdul Rehman Najar

Resident of: General Bus Stand, Islamabad, Islamabad district

Alleged Perpetrators

1. Harmeet Singh, Deputy Superintendent of Police [DSP], Special Operations Group [SOG]
2. Mukesh, Special Operations Group [SOG]
3. Ramesh, Special Operations Group [SOG]

Case Information

In 2004, there was an attack on Omar Abdullah at Sarnal, while going to Safdar Baig's house on the fourth day of the death of Safdar Baig. Ghulam Rasool Najar was alleged to have carried out the attack. He was charged with section 307 [attempt to murder]. He was arrested by the Army, SOG, Central Reserve Police Force [CRPF], from his home and taken to the Joint Interrogation Centre [JIC]. In the JIC, he was kept for 9 days and tortured by Harmeet Singh,

¹⁴ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 7 October 2011. By communication dated 22 May 2012 from the Jammu and Kashmir Police a copy of the FIR was provided.

Ramesh and Mukesh there, through methods such as electrocuting his body and hanging him by his hands and dipping his head in water.

Then he was taken to Kot Balwal jail for two years under the Public Safety Act [PSA]. Since his release he has been riding an auto.

Ghulam Rasool Najar, gave the above statement to the IPTK.

The victim's statement is clear and cogent evidence is presented of the torture by the alleged perpetrators. The allegations warrant further investigation.

Case No. 34

Victim Details

Ashiq Hussain Narchoor [Torture]
Age: 35
Occupation: Private School Teacher
Son of: Mohammad Yousuf Narchoor
Resident of: Mattan Chowk, Islamabad, Islamabad district

Alleged Perpetrators

1. Ashiq Bukhari, Superintendent of Police [SP], Islamabad District, Jammu and Kashmir Police
2. Rashid, Sub-Inspector [SI], Special Operations Group [SOG], Jammu and Kashmir Police
3. Harmeet Singh, Deputy Superintendent of Police [DSP] Operations, Special Operations Group [SOG], Jammu and Kashmir Police
4. Kaka Batta [two star], Special Operations Group [SOG], Jammu and Kashmir Police
5. Shabir, SHO, Special Operations Group [SOG], Jammu and Kashmir Police
6. Rashid, Assistant Sub-Inspector [ASI], Special Operations Group [SOG], Jammu and Kashmir Police

Case Information

In 2004, the SOG and 42 Battalion Rashtriya Rifles [RR] of Khanabal camp picked up the victim. Four persons belonging to the SOG – SI Rashid, DSP Operations Harmeet Singh, Kaka Batta, and SHO Shabir– entered the victim's house and took him away. A few other SOG personnel and the army, which remained outside and cordoned the house, accompanied them. They took him to the Joint Interrogation Centre [JIC], Khanabal in a “Rakshak” Jeep.

At the JIC, the victim was tortured – he was hanged upside down and was beaten on his back; his legs were stretched and a wooden roller was rolled on them. SI Rashid removed the victim's toenails; Rashid [one star] rolled the roller on his legs. The victim learnt

about the identities of these officers within the JIC itself.

8-9 days later, the victim was taken to Khanabal Camp where he was kept in a torture cell. His head was immersed in water there by the army personnel. He was also beaten by Ashiq Bukhari [the victim was unaware of his designation but as per official information Ashiq Bukhari was SP Anantnag from June 2004 to May 2006] who asked the victim to produce all his weapons. He was accused of being a militant and that he was associated with other militants, namely Ghulam Rasool Wagay alias Kach Gour and Babar [a Pakistani militant]. The former was the victim's neighbor and so they were on good terms with one another. But they had no common militant connections. The same evening, at around 7 pm, the victim was brought back from Khanabal to the JIC.

He was then kept in the JIC again for 18 days, after which he was taken to Kot Bhalwal Jail. Due to the torture undergone in the JIC, he remained on bed rest and under medical treatment in Kot Bhalwal for three and a half months. He was unable to walk for a long time. The victim was in jail for many months with proceedings initiated against him in the local court.

The victim, Ashiq Hussain Narchoor, gave the above statement to the IPTK on 23 April 2015.

The victim's statement is clear, and cogent evidence is presented of the torture by the alleged perpetrators. The allegations warrant further investigation. SP Ashiq Bukhari is accused of beating the victim. But, as the SP of the district, he would also be responsible under the international criminal law principles of command responsibility.

Case No. 35

Victim Details

Hafizullah Malla [Torture]
Son of: Abdul Rehman Malla
Resident of: Raipora, Palhallan

Alleged Perpetrators

1. Verma, Major, Wusan army camp

Case Information

On 27 September 2004, Major Verma sent army from Wusan camp to pick up the victim and bring him to the camp. At the camp they took two photographs of his and asked him to come again on the next day. The following day, the victim again went to the camp and there they took him to the torture cell. In the cell, Major Verma himself ordered his personnel to connect wires to the victim's penis. Then they gave him electric shocks for around half an hour. They also beat him with the sticks. He was accused of being a militant which the victim denied. On the same evening he was released but was ordered to appear in the camp daily. Therefore, he appeared in the camp for a consecutive

37 days. Then it stopped for 15 days as it was the month of Ramzan.

The victim gave the above statement to the IPTK on 24 July 2015.

The victim's statement is clear, and cogent evidence is presented of the torture by the alleged perpetrator. The allegations warrant further investigation.

Case No. 36

Victim Details

[Name and identifying information withheld on the request of the victim/witness] [Torture]
Occupation: Shopkeeper

Resident of: Islamabad district

Alleged Perpetrators

1. Harmeet Singh, Deputy Superintendent of Police [DSP Operations], Special Operations Group [SOG], Joint Interrogation Center [JIC]
2. Kaka Battaa, Assistant Sub-inspector of Police [ASI], Special Operation Group [SOG], Joint Interrogation Center [JIC]
3. Ramesh, Sub-Inspector of Police, Special Operations Group [SOG], Joint Interrogation Center [JIC]

Case Information

The victim has been detained numerous times since 2002.

In 2002, the victim was picked up by the Jammu and Kashmir Police from his house on the pretext of having links with militants; he was taken to Police Station Sadder. He was kept there for about a week and released thereafter. On this occasion, SHO Mushtaq of the police station took Rs. 1 lakh from the family of the victim for his release and for ensuring that there was no case filed against him. The SHO received money through his source Zahoor Ahmad.

Then, one early morning in November 2004, the victim was taken away. Many youths had been taken away that time because of an attack [mine blast] on Farooq Abdullah. The victim was taken to the JIC and was straight away put to torture on the orders of alleged perpetrator no.1. Like all the youth who were beaten, he was hanged upside down. His hands were tied behind his back. He was kept stark naked and tied to a rope; he was electrocuted in the genitals and toes

and a roller was rolled over his legs. Two SOG personnel were at either side and two were pressing down on the centre. The torture was being physically done by alleged perpetrators no.2 and no.3 in addition to others. There were a total of 10 people torturing the victim. The victim was tortured for 4 hours and then was thrown into a cell and kept there for 7 days. He was asked to accept the responsibility of the attack but he pleaded his innocence. Then he was released from JIC.

In December 2004, an escort of alleged perpetrator no.1 got killed. The victim's house was cordoned and surrounded by SOG and Ikhwan. Then, alleged perpetrator no. 2 took the victim away, along with his father and two of their domestic helps. They were taken to the JIC and beaten and kept there for 2 days, after which they were sent to Police Station Sadder and were released the third day.

On 3 March 2005, the victim was once again picked up from his house by perpetrator no.3 and other SOG men. He was taken to the JIC, accused of having weapons of Al Badr and then he was tortured severely. He was electrocuted, roller was used on his legs. This torture continued for 24 hours. On this occasion he was also "questioned" by SP Ashiq Bukhari.

Then after three days he was sent to Sherbagh Police Post and then to Sadder Police Station Anantnag. There he was kept in custody for 13 days, and eventually booked under the PSA, and sent to Kot Bhalwal Jail, Jammu. He remained in jail for 14 months and was released only in May 2006.

Shortly after his release, he was first taken to Police Station Sadder, Islamabad, and then to CIK Humhama, then again to Police Station Sadder and then finally released.

Due to his torture the victim's shoulder bones were damaged and he developed serious disorders. He could not eat with his hand for 9 months.

The above statement was given by the victim himself to the IPTK on 9 January 2015.

The statement of the victim is clear and cogent evidence of torture is provided. The allegations against alleged perpetrator no.1 and alleged perpetrators 2 and 3 are clear and are prima facie evidence of torture. Alleged perpetrator no.1 was clearly in charge of the torture whereas the other two alleged perpetrators physically carried out the torture.

The role of SP Ashiq Bukhari needs to be investigated in this case as he was SP of the District at the time. Under international criminal law principles of command responsibility it is clear that as the seniormost police official of the District, SP Ashiq Bukhari would have responsibility for the crimes committed by personnel under his effective control. In

the instant case, he cannot claim a lack of knowledge of the torture of the victim as the victim testifies to being questioned by SP Ashiq Bukhari on one occasion when in fact he was being tortured. This is the same period of detention when it appears the victim was most brutally tortured.

Case No. 37

Victim Details

Manzoor Ahmed Bhat [Torture]

Age: 32

Occupation: Transport Dealer

Son of: Abdul Rashid Bhat

Resident of: Sarnal, KP Road, Gulshanabad, Islamabad District

Alleged Perpetrators

1. Ashiq Bukhari, Superintendent of Police [SP], Jammu and Kashmir Police
2. Harmeet Singh, Deputy Superintendent of Police [DSP], Operations, Special Operations Group [SOG], Jammu and Kashmir Police
3. Kaka Battaaa, Assistant Sub-inspector of Special Operations Group [SOG], Jammu and Kashmir Police

Case Information

On 12th Ramzan in 2004, DSP Harmeet Singh, who was accompanied by the army, picked up the victim at the New Market in Kralyar. He was in the market in his Tata Sumo vehicle. After being arrested DSP Harmeet Singh told him that he has connections with militants and he was straightaway taken to the Joint Interrogation Center [JIC] at Khanabal, Islamabad.

Harmeet Singh was DSP Operations of SOG and had his office at JIC. On the same day at around 1:00am SOG personnel including one Kashmiri Pandit personnel, namely, Kaka Battaaa took him into the Interrogation Centre. He was forced to remove his clothes, his hands were tied at his back and his legs were also tied. He was made to lie down on the floor, then the personnel started to beat him with bamboo sticks particularly the bottom of his feet. They then beat him on his shoulders, and brought forth an electric circuit. One wire was put into his penis and another one over his foot and he was electrocuted. After this, an iron roller was rolled over both his legs. Three personnel on each end of the roller were trampling down his legs. This torture continued for the whole night.

At about 2:30 am on the same night, SP Ashiq Bukhari came to the interrogation room, wearing a track suit, accompanied by some other personnel. DSP Harmeet Singh was still present in the room and told Ashiq Bukhari, "He is Meenu" [Meenu was the victim's nick

name]. They had accused him of killing an MLA, namely Safdar Beigh and police personnel Mohammad Yousuf of Mattan and two Ikhwanis, Mohd Amin Sadru and Mukhtar Khan. Ashiq Bukhari asked him about his involvement with Hizbul Mujahideen. Ashiq Bukhari, Harmeet Singh and Kaka Battaaa accused him of being accompanied by some Pakistani militants while killing the above named persons. Ashiq Bukhari snatched a stick from one of his men and started to beat the victim. The victim was in the interrogation room for about half an hour during which he questioned him as well as beat him. While beating him, Ashiq Bukhari asked him to give up the gun, pistol and asked him to reveal the name of the Hizbul Mujahideen commander. He replied saying that Shabir Ahmad Badoodi was their commander and that he worked for Hizbul Mujahideen after receiving training for three years in the early 90's. Harmeet Singh trampled his chest during the torture and Kaka Battaaa inflicted most of the torture on him. At that time Kaka Battaaa was the Assistant Sub-Inspector, now he has attained the rank of SHO (Inspector).

On the second day at the interrogation centre the victim was once again tortured. Nails of both of his toes were broken by repeated blows with a wooden hammer. A few days later Ashiq Bukhari and Harmeet Singh took him into their chamber and asked him to provide information about Pakistani militant Babar and also asked for ammunition. But he pleaded saying that he had no such information. For about twenty five days he was detained and tortured at JIC Khanabal. Out of those twenty five days, he was severely tortured for four days. Harmeet Singh and Ashiq Bukhari forced their men to increase the torture so that they could extract more information from him.

There were three other persons who were detained with him at that time. Among the detainees were: Khurshid Ahad Lone, resident of Mazibagh, Mattan Chowk, Islamabad, Suhail Ahmad Din, resident of Mattan Chowk, Islamabad, Ashiq Narchoor, resident of Mattan Chowk, Islamabad.

The above mentioned persons were tortured severely as well. Suhail Ahmad Din's beard was plucked out by Kaka Battaaa and other SOG men due to which he developed an infection and puss.

Twenty five days later, all of them were taken to the army camp near JIC by DSP Harmeet Singh. There, some IB Officers questioned them and in the evening Harmeet Singh took them back to JIC. They were detained at JIC for ten more days, during which their photographs were taken and some documents were prepared and all four of them were booked under PSA. Then along with Ashiq Narchoor, the victim was sent to Kot Bhalwal Jail Jammu while the others were taken to Kathua Jail. No medical assistance was provided to them in JIC. They received help from their fellow inmates at Kot Bhalwal Jail. They provided them some medicines. After serving two years sentence in the

Koth Bhalwal Jail, the victim's detention order was quashed, but instead of releasing him he was then taken by Counter-Intelligence Kashmir [CIK] in Jammu, who got him transferred to Baramulla Jail and then from Baramulla he was shifted to Srinagar Central Jail. When his family brought a release order to Srinagar Central Jail, he was taken by CIK personnel to Humhama Camp. He was detained there for about a month. Following further transfers between detention centres, he was released after a period of in the last month of 2007. After his release, he started a service station.

The victim, Manzoor Ahmed Bhat, gave the above statement to the IPTK on 9 January 2015.

The victim's statement is clear, and cogent evidence is presented of the torture by the alleged perpetrators. The allegations warrant further investigation. There is a slight discrepancy between his statement and that of Ashiq Hussain Narchoor with regard to when they were taken from the JIC to the Khanabal army camp for a single day. Ashiq Narchoor says it was 8-9 days after being detained whereas the victim here says it was 25 days later. Except for this discrepancy, the two statements corroborate one another.

Case No. 38

Victim Details

Sheikh Aijaz Ahmad [Torture]

Age: 29

Occupation: Painter

Son of: Abdul Rahim Sheikh

Resident of: New Colony, AlyalPora, Shopian district

Alleged Perpetrators

1. Major Ravi, 44 Rashtriya Rifles [RR], Veterinary Camp stationed near Shopian Police Station

Case Information

On 8 July 2005, the Hurriyat [G] chairman Syed Ali Shah Geelani was visiting the Jamia Masjid at Shopian. He addressed a huge gathering there. The victim also attended the gathering.

Early morning the next day, army personnel came to his house led by Major Ravi. They dragged him out of the house and wrapped his Pheran [traditional dress of Kashmir] on his head; he was blindfolded and couldn't see anything.

After some time, they reached the camp where he was thrown inside a dark room. After half an hour, Major Ravi came and started beating him with a wooden rod and told him to take off his clothes; but the victim refused. So the Major then called a few personnel, who forcibly stripped him. He ordered his guards to bring some pepper powder. And his private

parts were filled with pepper powder. After some time, he was blind folded and they beat him with a sharp wire.

Then, he was asked to translate the speech that Geelani had delivered. While watching its video [victim did not know where the video came from], he did the same. They scared him, abused him and beat him after he had translated the speech. They showed him blood spots and said that they belonged to Shakoor Deva, who was killed by the same camp during torture. The victim was continuously tortured for five days.

It was known around town that the Major's name was Ravi. Secondly, he himself said that his name was Ravi. He gave his phone number to the victim and told him that he could call him whenever he wanted and that he could work with him.

In August 2005, he raided the victim's sister's house, took photographs of his niece and asked them to make the victim call him. But the victim does not know which unit he was from except that he was from the veterinary army camp near police station Shopian.

He has also been victimized by the filing of a false First Information Report [FIR] against him and he was detained for seven days. After seven days, he was bailed and released.

The victim, Sheikh Aijaz Ahmad, gave the above statement to the IPTK on 6 August 2014.

The details of the torture, and the identification of the alleged perpetrator [the details of the unit and the camp are presumably the same as in the Shakoor Ahmad Deva case] are clear and specific enough to warrant further investigations.

Case No. 39

Victim Details

[Name and identifying information withheld on the request of the witness] [Torture]

Occupation: Contractor

Son of: _____

Resident of: _____, Bijbehara, Islamabad district

Alleged Perpetrators

1. Sheikh Tahir alias Tahir *Fuf*, Government Gunman [Ikhwan]
2. Kaka Battaa, Special Operations Group [SOG], Jammu and Kashmir Police

Case Information

In September 2005, personnel of the 3 Rashtriya Rifles [RR] of Khanabal camp cordoned the area at about 5:30 am. Sheikh Tahir *Fuf*, an Ikhwan, informed the army that there were militants in the victim's

house. The army first sent local residents of the locality inside the house to tell them to get out and assemble in the compound. After they left, the army along with Tahir entered the house and searched all the rooms. Tahir asked the wife of the victim about the militants. She replied that there were no militants in the house. They broke the windows and doors of the house and threw the bedding outside in the compound. Tahir also cut the landline connection and electricity of the house. Then the army picked up the victim and took him to the Joint Interrogation Centre [JIC] at Khanabal.

On the same night, the army again came to their house and asked about the victim's son. The son was working as a guard in a park, and on that night he was on his night duty. The army somehow came to know about this and they picked him up from the park and took him to the JIC at Khanabal too.

An officer in the camp, called Kaka Battaa, tortured both of them. They were hung upside down and were beaten. They were made to stay at the JIC for 4 days. The son was released after a few days and his father was shifted to Mattan police station for 15 days. After that, he was shifted to central jail Srinagar. From the Central Jail, the victim was brought to Islamabad court and booked under the Public Safety Act [PSA]. Then the victim was shifted to Kot Bhalwal and kept there for one year. After that, the victim was released.

The victim gave the above statement to IPTK on 7 May 2015.

The victim's statement is clear, and cogent evidence is presented of the torture by the alleged perpetrators. The allegations warrant further investigation.

Case No. 40

Victim Details

Mukhtar Ahmad Ganai [Abduction, Wrongful Confinement and Torture]

Age: 32 [25 at the time of the incident]

Occupation: Transport business

Son of: Muhammad Maqbool Ganai [deceased]

Resident of: Sadrakote, Balla, Sumbal, Bandipora District

Alleged Perpetrators

1. Farooq Ahmad Padder, Station House Officer [SHO], Jammu and Kashmir Police
2. Personnel of the Special Operations Group [SOG], Jammu and Kashmir Police, Safapora Camp

Case Information

On 14 October 2005, at night, personnel of the SOG raided the house of Mukhtar Ahmad Ganai. SHO Farooq Ahmad Padder was present. The SOG personnel were drunk. Mukhtar Ahmad Ganai was taken to the Manasbal Army Camp on the charge of

having assisted militants. He was tortured by SHO Farooq Ahmad Padder and an army person. Mukhtar Ahmad Ganai was electrocuted and parts of his body were burnt.

Following the night of torture, Mukhtar Ahmad Ganai admitted to assisting militants and stated that he had a gun. Mukhtar Ahmad Ganai confessed hoping to be allowed to meet with his family. The Commanding Officer then released Mukhtar Ahmad Ganai, who had thus far been hung upside down, and facilitated his release.

In addition to the torture, the SOG personnel stole Rs.1040 from Mukhtar Ahmad Ganai. Following his release, Mukhtar Ahmad Ganai was hospitalized for three and a half months and spent around Rs. 2,00,000.

The family of Mukhtar Ahmad Ganai gave a statement to the IPTK on 9 February 2012.

A First Information Report [FIR] was filed at the Sumbal Police Station on 15 October 2005.

Mukhtar Ahmad Ganai received no relief or compensation. Further, no information exists on the investigations and prosecution, if conducted, against the alleged perpetrators.

Case No. 41

Victim Details

Identity not ascertained [Crime not ascertained]

Alleged Perpetrators

1. Gunner [Gnr] Bali Ram, Army
2. Gunner [Gnr] Ganishyam, Army

Case Information

As per information from the Ministry of Defence, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecution under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 10 January 2012 that on 30 May 2006 there was a death due to negligence. First Information [FIR] no. 139/2006 was filed. The case was under examination.

No information exists on the status of investigations or prosecutions in this case by the Jammu and Kashmir Police. But, it is noteworthy that despite the passage of six years since the commission of the crime, the Ministry of Defence has yet to take a decision on the grant of sanction for prosecution under AFSPA which helps the perpetrators in evading justice. Further, the available documents do not suggest that even a Court-Martial was conducted in this case by the army.

This case is an example of the manner in which the State shields itself by withholding information – in this case the names and details of the victims and incomplete FIR details [the name of the police station is not provided]. Without this information, it is difficult to independently analyze the case.

Case No. 42

Victim Details

Mohammad Abdullah Bhat [Crime not ascertained]
Resident of: Soura, Srinagar

Alleged Perpetrators

1. Inspector K.K.Verma, Border Security Force [BSF] Headquarters, Srinagar

Case Information

The Government of Jammu and Kashmir, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on sanctions for prosecutions under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 [AFSPA], stated on 6 September 2011 in relation to this case that sanction was declined on 21 January 2007.

Information on this case was sought through RTI on 7 October 2011. No information was provided. The IPTK sought information on 10 January 2012 on all inquiries and court-martials conducted by the BSF between 1990 and 2011 in Jammu and Kashmir. No information was provided. The IPTK sought information on 10 January 2012 on all cases of sanctions for prosecution under AFSPA relating to the Ministry of Home Affairs between 1990 and 2011 in Jammu and Kashmir. No information was provided.

IPTK tried to contact the family of Mohammad Abdullah Bhat but was unable to do so.

This case is an example of the manner in which the State shields itself by withholding information – in this case the full residential details of the victim and First Information Report [FIR] details. Without this information, it is difficult to independently analyze the case.

Case No. 43

Victim Details

Farooq Ahmad Bhat [Abduction, Torture]
Age: 37
Occupation: Wood Seller
Son of: Mohammad Khalil Bhat
Resident of: Hairpora, Waghama, Islamabad

Alleged Perpetrators

1. Arshid Khan, Station House Officer [SHO], Police Station Srigufwara
2. Harmeet Singh, Deputy Superintendent of Police [DSP], Special Operations Group[SOG], Jammu and Kashmir Police
3. Ramesh Lal [popularly known as interrogation master], Special Operations Group [SOG], Jammu and Kashmir Police
4. Mohammad Yousuf, Sub-Inspector [SI], Special Operations Group [SOG], Jammu and Kashmir Police
5. Parvaiz Ahmad Shah, Sub-Inspector [SI], Special Operations Group [SOG], Jammu and Kashmir Police
6. Javaid Mattoo, Assistant Sub-Inspector [ASI], Special Operations Group [SOG], Jammu and Kashmir Police

Case Information

At around 9:15 am on 22 July 2006, the Central Reserve Police Force [CRPF] and Special Operations Group [SOG] cordoned the victim's house. They had come exclusively to pick up the victim, as they had been informed by a source that he provided shelter to militants. This was a wrong allegation and the victim doesn't know who had informed SOG/CRPF about this. The CRPF cordoned the house of the victim from the outside while SOG personnel barged into the house and asked about him. The victim was there and they picked him up. The SHO of Srigufwara Police Station had come to pick up the victim. Later, in the police station, the victim came to know through other detainees that the SHO's name was Arshid Khan.

The SOG/CRPF took the victim to Srigufwara Police Station. In the police station, Arshid Khan and other SOG personnel tortured him; they stripped him, hung him upside down and beat him on his backside with sticks. This torture lasted almost 6 hours from 10:15 pm to 4 am.

After four days, Arshid Khan took him to the Joint Interrogation Centre [JIC] at Khanabal and handed him over to Deputy Superintendent of Police [DSP] SOG Harmeet Singh.

On the very first day at the JIC, Ramesh Lal and other SOG personnel tortured the victim. Ramesh Lal was known in the JIC as interrogation master. The victim came to know about name of Mohammad Yousuf, Sub-Inspector [SI] of the SOG, Khanabal from other detainees. He was stripped and his body and penis were electrocuted, a roller was rolled over his body and he was forced to drink chili powder water. Harmeet Singh would sometimes be present in the torture room; he would ask the victim about the militants' whereabouts during the torture and he kicked and slapped him many times. This torture impacted the victim's health and disturbed him psychologically. After the torture he was depressed

and sometimes got aggressive for no reason. The victim was kept in the JIC for 20 days and was interrogated daily from 11 pm to 2:30am.

During these 20 days, he was taken to the office of Senior Superintendent of Police [SSP], Abdul Gani Mir who also asked him about the militants and their whereabouts. The SSP named some militants such as Jehangir Dar of Hulmulla, Sangam, Bijbehara and Fayaz Dar of Waghama. The victim wasn't aware about these militants or about their whereabouts. After 20 days SSP Gani told him that he will release him, but instead, he will pick his younger brother Mohammad Ibrahim Bhat, 18, up, as he might tell them something about the militants. He was handed over to Police station Bijbehara and who released him on the same day. But the harassment still continued.

3 RR of the Waghama Camp; SOG of Srigufwara used to come to his house daily and kept his house under surveillance. He was also asked to appear daily to the SOG camp Srigufwara by Arshid Khan for 10 days.

This threat of harassment and torture led his brother to join the Hizbul Mujahideen; he wondered if he would also be arrested or face the same type of torture. So, during the days when the army and the SOG were coming to their house, the brother of the victim joined Hizbul Mujahideen. After some days, he became an active militant, though he didn't go across the border for training.

In this period, Arshid Khan, SHO Srigufwara, summoned the victim. He asked him about his brother's whereabouts. Aijaz Khan, DSP Bijbehara, also summoned him and told him to make his brother surrender. The victim said to both the officers that he was not aware about his brother's whereabouts. Once, the victim's house was also raided and when they couldn't find his brother there they gutted down the house by some explosion. His brother was an active militant for nine months and after nine months he was killed in an encounter at Panjpora, Sangam on 6 April 2007.

Twenty days after the killing of his brother, Ramesh Lal, along with other SOG personnel, came to his house and arrested him again. They took him to the JIC at Khanabal, where he was tortured and was asked to produce the weapons of his brother and give information about his other militant friends. He was electrocuted, his legs were stretched and a roller was rolled over him. This time SI, SOG Parvaiz Ahmad Shah and Assistant Sub-Inspector [ASI], SOG Javaid Mattoo were asking him about the militant friends of his brother. He was released after 2 months because his health had deteriorated due to the torture; he would often bleed from his mouth. He was taken to the hospital by SOG personnel and was released thereafter.

After all this, he was again arrested on occasions such

as Independence Day, Republic Day or on the Kashmir visit of any minister. In 2013, the then Prime Minister Manmohan Singh was due to visit Kashmir. As a result, DSP Puri of Sangam Police Station [SOG] summoned the victim. But he didn't go. But he realized that he was being kept under surveillance.

Eight days later, the SOG picked him up at Awantipura Market. He was taken to SOG police station Sangam. They kept him there for 15 days. This time he was not tortured.

Since that day, the victim appears at the SOG police station Sangam whenever they call him. His life is depressing because of this reason. He cannot even sleep properly because of the threat that the police or army would arrest him.

The victim, Farooq Ahmed Bhat, gave the above statement to the IPTK on 5 May 2015.

The victim's statement is clear, and cogent evidence is presented of three separate incidents of torture by the alleged perpetrators. The allegations warrant further investigation.

The role of SSP Abdul Gani Mir also requires further investigation. As per official information provided in RTI response, Abdul Gani Mir was the District SP of Islamabad from 31 May 2006 to 28 February 2008. Therefore, the presence of Abdul Gani Mir as District SP in July 2006 is corroborated. Further, considering that the witness/victim testimony is that he was tortured *every day* between 11 and 2:30 am at the JIC and that it was during this period of time that he was also questioned by SSP Gani Mir it is highly probable that Gani Mir would or should have known of the torture at JIC. If not through the SOG personnel at JIC, certainly through his meeting with the witness/victim, he would have known of the torture taking place. To that extent, and at least based on the international criminal law principles of command responsibility, it is clear that Abdul Gani Mir [presently Inspector General, CID] should be investigated for failing to take action following knowledge of a crime being committed by persons under his effective control.

Case No. 44

Victim Details

Manzoor Ahmad Wani [Grievous hurt (bullet injury)]

Age: 30

Occupation: Salesman, Hardware shop

Son of: Mohammad Abdullah Wani

Resident of: Bumthan, Mir Bazaar, Islamabad District

Alleged Perpetrators

1. Rifleman Mukesh Singh, 36 Rashtriya Rifles [RR], GARH RIF, Camp Larkipur, Islamabad

Case Information

On 10 December 2006, Manzoor Ahmad Wani was cleaning up the shop when two soldiers appeared and one of them, Rifleman Mukesh Singh, caught hold of the collar of the Manzoor Ahmad Wani and abused him without any reason.

When Manzoor Ahmad Wani protested, the soldier threatened to shoot. The soldier cocked his gun and shot. Manzoor Ahmad was rushed to the District Hospital, Islamabad, and was then referred to Sher-e-Kashmir Institute of Medical Sciences [SKIMS], Srinagar. His left kidney and spleen were completely shattered and his large intestine was also affected. Both the kidney and spleen were removed.

Manzoor Ahmad Wani gave a statement to the IPTK on 29 April 2012.

First Information Report [FIR] no. 270/2006 u/s 307 [Attempt to murder] Ranbir Penal Code, 1989 [RPC] was filed at the Qazigund Police Station¹⁵.

The Head of General Surgery, SKIMS, Srinagar, issued a certificate on 13 December 2006 that stated that Manzoor Ahmad Wani had received grievous injuries [“loss of spleen and one kidney”]. Further, that the victim was liable to recurrent infections and due to removal of one kidney he was liable to have a possible renal failure.

A petition was filed before the High Court of Jammu and Kashmir [Original Writ Petition (OWP) 973/2007] seeking the completion of investigations and payment of Rs. 10,00,000 compensation¹⁶.

Further, a Summary General Court-Martial [SGCM] was instituted in October 2008. But, the victim has no knowledge of the findings of the court-martial. But, by letter dated 18 June 2012, in response to information sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI], information was provided by the Judge Advocate General Department that Rifleman Mukesh Singh was found “Not Guilty”.

Manzoor Ahmad Wani approached the State Human Rights Commission [SHRC] on 29 November 2007 and a final decision was issued by the SHRC on 22 July 2008. Ex-gratia government relief of Rs. 75,000 was recommended. Manzoor Ahmad Wani received Rs. 75,000 from the Government of Jammu and Kashmir and Rs. 50,000 from the army.

In addition to the medical certificate issued on 13 December 2006 that confirms the injuries sustained by Manzoor Ahmad Wani, the SHRC final decision of 22 July 2008 serves as an indictment of Rifleman Mukesh Singh.

The SHRC decision begins with a narration of the Manzoor Ahmad Wani's testimony. Manzoor Ahmad Wani submitted to the SHRC that Rifleman Mukesh Singh asked him to show his identity card and also “to put off the clothes”. Manzoor Ahmad showed his identify card but refused to “put off the clothes” [in his statement to the IPTK the Manzoor Ahmad Wani has stated that he was asked to lift his *pheran*]. The Rifleman Mukesh Singh then said “you Kashmiris are born to die” and fired at the victim. The Director General of Police [DGP], Jammu and Kashmir, Srinagar submitted a report dated 27 May 2008 to the SHRC. This report states that the Rifleman Mukesh Singh asked Manzoor Ahmad Wani to show his identity card but he showed him his election card. The Rifleman Mukesh Singh insisted that another identity card be displayed, there was a “heated exchange”, following which the Rifleman Mukesh Singh shot at Manzoor Ahmad Wani.

The chargesheet, following investigations, in the case was produced before the Judicial Magistrate 1st Class, Qazigund on 30 November 2007. The victim was found not to have been involved in any subversive activity till date. Based on the above, the SHRC found that the case against the Rifleman Mukesh Singh was “clearly established”.

The SHRC final decision, and the production of a chargesheet before the competent court, therefore strongly indicts the Rifleman Mukesh Singh in the instant case. But, it appears that the case was transferred to a Court-Martial, where despite strong evidence against the alleged perpetrator, he has been acquitted. Further, it is unclear if the acquittal of Rifleman Mukesh Singh was agitated by the State or the army itself.

Case No. 45

Victim Details

Fayaz Ahmad Ganai [Torture]

Age: 38

Occupation: Baker

Son of: Ghulam Mohammad Ganai

Resident of: Ketpora, Palhallan, Baramulla district

Alleged Perpetrators

1. Dalal, Major, 29 Rashtriya Rifles [RR], Wusan Camp
2. Shahnawaz, Government Gunman [Muslim Mujahideen]
3. Mohammad Shaban Tantray, alias Shaban Kawa resident of Tantray Pora, Government Gunman [Muslim

¹⁵ Information on this FIR was sought through the Jammu and Kashmir Right to Information Act, 2009 [RTI] on 5 May 2012. No information was provided. Further information sought through RTI on 15 October 2013. Further information sought through RTI dated 14 November 2014.

¹⁶ Information on the petition number was sought through RTI on 16 February 2012. Information was provided.

- Mujahideen]
4. Abdul Rashid Hajam, resident of Raipora, Government Gunman [Muslim Mujahideen]
 5. Abdul Rashid Malla, resident of Raipora, Government Gunman [Muslim Mujahideen]
 6. Abdul Rasheed Hakim, Government Gunman [Muslim Mujahideen]
 7. Ghulam Mohammad, resident of Kadipora, Tangmarg, Government Gunman
 8. Mukhtar, resident of Mirgund, Government Gunman

Case Information

In 1995, the victim was at his bakery shop when 10-15 government gunmen raided it. They included Shahnawaz, Mohammad Shaban Tantray, Abdul Rashid Hajam, and Abdul Rashid Malla. The victim was taken by these gunmen to Kaw Mohalla, where their camp was. He was picked up at about 11:30 am on the allegation that he was affiliated with militants. In the camp, his hands were tied and he was beaten with sticks by the following gunmen: Abdul Rashid Hakim, Abdul Rashid Malla, Ghulam Mohammad and Mukhtar. They also trampled the victim. This torture was done to the victim till 2 pm. The victim was told to join them or else he would be killed. He was released at about 6 pm the same day.

On the next day, the victim left his home, along with his family, and stayed at Baramulla. They then lived in Srinagar for ten months. After 10 months, the victim returned home, but two months later, the government gunmen again started harassing the victim. They led the Mahar Regiment of the army to arrest the victim in 1996 at about 9 am in Palhallan. In the camp, the victim was stripped and was hanged upside down. Two army personnel beat the victim with a belt and hot oil was poured in his rectum. This torture continued till 5:30 pm. Then the victim was released the next day at about 12-1 pm.

In 2007, the house of the victim was raided at midnight by the army of Wusan Camp, 29 RR. Major Dalal was their commander. The victim identified Major Dalal as he was known in the area. The victim was arrested again on the allegation that he was a militant. He was taken to Wusan Camp. From 12:30 am onwards, 8-10 army personnel tortured him. The victim was stripped, and was then hanged upside down. His body and private parts were electrocuted. Major Dalal was also in the cell during the torture; he was forcing the victim to admit that he was a militant. But he denied this. He was tortured till 2:30 am. On the next day, he was released at about 3 pm, when the army felt that he was "innocent".

In 2010, Major AK Sharma called the victim twice to the army camp at Palhallan. He was asked whether he was a militant. He was neither detained nor tortured on

these occasions. After this, he was not harassed anymore.

The victim, Fayaz Ahmad Ganai, gave the above statement to the IPTK on 31 May 2015.

The victim's statement is clear, and cogent evidence is presented of three separate incidents of torture. In the first and third incident, the alleged perpetrators are named. The second incident of torture would require further investigations identify the army officials involved in the Palhallan camp.

Case No. 46

Victim Details

Ashiq Hussain Zargar [Torture]

Age: 33

Occupation: Electrician [Private]

Son of: Abdul Majeed Zargar

Resident of: Feroz Shah Mohalla, Bijbehara, Islamabad district

Irshad Ahmad Zargar [Torture]

Resident of: Bijbehara, Islamabad District

Alleged Perpetrators

1. Zahid Malik, Superintendent of Police [SP, operations], Special Operations Group, Joint Interrogation Center [JIC], Khanabal

Case Information

During the 2010 uprising, a youth and a friend of the victim Ashiq Hussain Zargar, namely Nazir Ahmad Wani, son of Abdul Rehman Wani from Bijbehara locality was allegedly shot in the head with a shell by DSP Farooq Ahmad Zargar outside a mosque where he was offering Friday prayers. This led to protests in the area against the perpetrators involved. Ashiq Hussain Zargar was a close friend of Nazir's and also the eyewitness to the killing. Following this Ashiq Hussain Zargar was therefore harassed.

Eventually, the Jammu and Kashmir Police picked up the victims during a cordon. They were then taken to Police Station Bijbehara. They were detained there for fifteen days in the lockup.

After that they were shifted to Joint Interrogation Center in Khanabal, as per the directions of Mohammad Rafiq, the SHO of the Police Station in Bijbehara. In the JIC, SP Operations Zahid Malik from Poonch, tortured the victims. They were taken to the interrogation room so as to compel them to accept the false charges, which were brought against them. SP Zahid Malik directed his escorts to the torture the victims. They were then beaten with a rubber belt for two days. Also, during their detention, their mouths were closed with cloth and then water was put on top of them to suffocate them. They were forced to drink

water mixed with chemicals. Due to the torture, Ashiq Hussain Zargar's stomach was badly affected and the right side of his body was partly paralyzed and his jaw bone has also been badly affected.

They were only released subsequently.

Ashiq Hussain Zargar gave a statement to the IPTK on 9 January 2015.

The above statement, given by one of the victims indicts SP Zahid Malik. The statement is not detailed as neither does it describe the torture in detail nor the full role played by SP Zahid Malik in the torture – but there is clear mention that he ordered his escorts to torture the two victims. This is prima facie evidence of the involvement of SP Zahid Malik in the crime of torture. It appears no FIR was filed by the victim but investigations could lead to an indictment against SP Zahid Malik.

Case No. 47

Victim Details

Javaid Ahmad Teli [Torture]

Age: 35

Occupation: Baker

Son of: Ghulam Mohammad Teli

Resident of: Teli Mohalla, Bijbehara, Islamabad district

Alleged Perpetrators

1. Raju, Officer, Central Reserve Police Force [CRPF], SICOP¹⁷ Camp
2. Sharma, Officer, Central Reserve Police Force [CRPF, SICOP Camp]
3. Chaman Mosi, Central Reserve Police Force [CRPF], SICOP Camp

Case Information

CRPF personnel from the SICOP Camp picked up the victim. The victim does not remember the particular battalion or the date on which he was picked up by the CRPF.

Some personnel, namely, officer Raju, officer Sharma and Chaman Mosi picked him up from his home. He does not know whether these were their real names or not. These officers were notorious for their cruel nature and that is how he was able to recognize them. The victim was taken in a Gypsy to the Bus Stand at Bijbehara. He was taken off and stripped there. The above-mentioned officers ordered their personnel to beat him. He was beaten for 10-15 minutes, after which he was allowed to wear his clothes. He was then taken to the CRPF camp at SICOP.

In the camp, the victim was stripped again and they rolled a roller on his legs and his private parts were electrocuted. Two CRPF personnel pulled his legs apart and stretched them.

They accused him of being a militant. Previously, the victim's friend, Nazir Shah son of Abdul Rehman Shah, had also been taken to the same camp, and during the time he was tortured, he mentioned the victim's name as a militant.

The above-mentioned three officers used to enter the torture cell and ask the victim about weapons. Officer Raju told him that if he did not give any information about weapons, he would kill him. These three officers never tortured the victim themselves but they would order their personnel to torture him. He was continued to be tortured on and off for 18 days. After 18 days, he was released and sent home on a stretcher.

After his release, whenever there would be a militant attack in the area, he would be taken to the camp and tortured. Every time he is taken to the CRPF Camp at SICOP and tortured under the supervision of the three above-mentioned officers.

There were allegations that his friend, Nazir Shah, was a militant and affiliated to the Hizbul Mujahideen. However, the truth is that he was not; he had merely partaken in stone pelting on the streets during the protests in 2008 and in 2010.

Armed forces personnel killed Nazir Shah in 2010 while stone pelting. The allegation on the victim and Nazir Shah was that they were affiliated with Hizbul Mujahideen.

During the torture, the victim's right foot was cut by a scissor and no medical treatment was given to him. As a result, he was unable to walk even after his release. Even today, he cannot stand for a long period of time. In fact, he was released and handed over to his family only when his health really deteriorated and he was about to die.

Even after his release, he is often picked up, arrested and kept in custody for 1-2 nights.

The victim, Javaid Ahmad Teli, gave the above statement to the IPTK on 23 April 2015.

The victim's statement is clear, and cogent evidence is presented of the torture by the alleged perpetrators. One lacuna in the statement is the fact that the witness cannot remember even the year of the incident. But, the allegations warrant further investigation.

17 Small Scale Industries Development Corporation Limited [SICOP]. This space was presumably occupied by the forces and set up as a camp.

Case No. 48Victim Details

Ghulam Hassan Hajam [Torture]

Age: 30

Occupation: Laborer

Son of: Abdul Rahim Hajam

Resident of: Duroo, Sopore

Alleged Perpetrators

1. Mukesh Bhatia, Deputy Superintendent of Police [DSP], Special Operations Group [SOG], Jammu and Kashmir Police

Case Information

A joint party of the police and the army arrested the victim on charges of assisting militants by providing them food and shelter. He was taken to Gunjoo House, Sopore where he was detained for two nights and then shifted to the SOG camp at Townhall for ten days. Then, he was taken to Police Station Sopore for one night and then to Sub Jail Baramulla for one week. From Sub-Jail Baramulla, he was shifted to Udhampur for nine months, after which he was transferred to Sub-Jail and then to Humhama for two months and ten days and then shifted to police station Sopore, from where he finally got released.

The victim has never spoken about his torture before. In SOG camp, Townhall, DSP Mukesh Bhatia and another army officer tortured the victim but he does not know the name of the latter. He was beaten with both steel and wooden rods, his legs were stretched, and electric shocks were given to his penis and toes. He was kept naked. He was hung upside down and a roller was rolled on his body. The DSP and army personnel used cigarette butts to burn his skin but no stove or other heating elements were used. He was given some medical treatment like antibiotics and ointments.

Abdul Salam Rather, Advocate, worked on his case in the sessions court Baramulla. The army claimed that they caught him in an encounter and recovered from him an AK-47. However, since the army never appeared before the court, he was acquitted. He was arrested in front of his family members including uncles and aunts and neighbors. His parents lodged a First Information Report in police station Sopore regarding his arrest. The police told his parents that they would trace their son's whereabouts within fifteen days.

The police disclosed to his parents that he was in custody of the SOG in Town Hall. The SOG personnel met his parents and demanded Rs. 50000. But, the parents had a modest background and couldn't afford to pay such a princely sum. Consequently, he was booked under the PSA.

His family members were very anxious regarding his security; hence, they suffered financial problems because his detention and the army's frequent raids disturbed the working schedule of his father. The police was a mute spectator; they did not act in an impartial way. The police was very timid and were following the directions of the army in a very submissive way.

The victim, Ghulam Hassan Hajam, gave the above statement to the IPTK on 24 April 2015.

The victim's statement is clear, and cogent evidence is presented of the torture by the alleged perpetrator. The allegations warrant further investigation. Particularly, it needs to be ascertained who the army officer was that was also involved in the torture. The date of the torture also needs to be ascertained.

Case No. 49Victim Details

[Name and identifying information withheld on the request of the victim/witness] [Torture]
Resident of: Islamabad District

Alleged Perpetrators

1. Zahid Malik, Superintendent of Police [SP] Operations, Special Operations Group [SOG], Jammu and Kashmir Police
2. Reyaz Punjabi, Assistant Superintendent of Police [ASI], Special Operations Group [SOG], Jammu and Kashmir Police
3. Ram Das, Special Operations Group [SOG], Jammu and Kashmir Police
4. Tariq, Special Operations Group [SOG], Jammu and Kashmir Police

Case Information

In January 2011, the victim was arrested by Islamabad police while he was in Srinagar. First, he was taken to Kothi Bagh Police Station for 3-4 hours and then was shifted to Joint Interrogation Centre [JIC] Khanabal. There, at about 10:00 am he was first stripped and kept in a dark room for about 2 hours. After that he was taken out of the room and taken to the office of SP (Operations) Zahid Malik. There was one more officer in the office namely Reyaz Punjabi (ASI probably). In SP Zahid's office they switched off the lights and SP Zahid asked Reyaz to shoot the victim. Then SP told Reyaz to put the gun down and asked him to leave the office. After that SP Zahid sipped some alcohol. He started questioning the victim for some time. After that he called two SOG men, Ram Das and Tariq, to take him out of the office. They took him to the torture cell and made him sit on a chair and tied him to that chair. Zahid ordered his men to beat the victim with bamboo sticks. He was beaten for half-an-hour. He was then made to bow down and a stick was put inside his rectum and was kept there for 10-15 minutes. He was hung for 30-45 minutes. After this he was made to lie down and a roller

was rolled over him. The torture continued till 03:00 am and then he was put in a dark room. He was bleeding through his rectum. On the next day he was shifted to Sadder Thana for two days and then was booked under PSA.

The victim's statement is clear, and cogent evidence is presented of the torture by the alleged perpetrators. The allegations warrant further investigation.

